

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

✓ 2011 DEC 29 AM 8:26

SANDRA K. LARKHAM, CLERK
 BY: Stephanie Kling

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR201080049

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY THIRTY-FIVE

APRIL 22, 2011

Camp Verde, Arizona

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

I N D E X

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1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Friday, April 22,
3 2011, at Yavapai County Superior Court, Division
4 Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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1 PROCEEDINGS

2 THE COURT: The record will show the presence
3 of the defendant, Mr. Ray, and the attorneys.

4 And I want to announce some rulings.
5 First, with regard to Mr. Hamilton, questioning
6 about comparison of sweat lodges will not be
7 permitted on direct.

8 In allowing the comparison testimony in
9 the prior sweat lodge testimony with regard to
10 causation, I was proceeding on what appeared to be
11 a common sense inference or an interpretation of
12 circumstantial evidence that it would indicate
13 this: That if there's suggestion that somehow
14 there were poisons in the materials or something
15 with the materials was a problem, then that would
16 show up in other sweat lodges. That's the premise.

17 And, therefore, just by odds, if you
18 will, or probability, if other sweat lodges don't
19 have any kind of heat-related issues -- I'll call
20 it -- call it that -- but Mr. Ray's sweat lodges
21 do, then the inference there is there can't be
22 poisons or toxins with these materials and how
23 they're layered doesn't make any difference.

24 Well, now that this report has been
25 disclosed, it's clear that this is a much more

1 complex problem than that.

2 In the supplemental brief it's noted, for
3 example, that apparently Mr. Haddow believes there
4 can be a concern with offgassing of formaldehyde.
5 I'm not an expert. I can't take my knowledge into
6 what that might mean. But that could be an issue.
7 The layering of the materials can be important.

8 You can think of other things. What --
9 does the length of time of heat exposure to
10 materials, does that make a difference? A lot of
11 questions.

12 So the whole issue of causation now, far
13 more complex. And I'm not going to permit further
14 testimony based on that circumstantial evidence
15 that has been presented so far.

16 I'm not going to strike the testimony
17 that has been admitted. I think that this is a
18 question of expert testimony or could be. So I'm
19 not going to do that at this point. I will not be
20 striking the testimony that's admitted at this
21 point. However, I have to see ultimately what the
22 experts might say concerning this.

23 I also want to note, as I've indicated, I
24 believe that the testimony that has been admitted
25 to date on these subjects -- comparison, prior

1 sweat lodges -- is admissible on other grounds.

2 I do want to note this, though: With
3 regard to Mr. Hamilton -- and I know I've expanded
4 this beyond just Mr. Hamilton. And I want to talk
5 about Mrs. Hamilton in a moment.

6 But I do want to note to the defense that
7 I know you conduct lengthy cross-examinations and
8 you cover a lot of topics. And if the door is
9 opened on these various matters, then that's what
10 happens. I'm just going to say that. If the door
11 is opened for either of the Hamiltons to discuss
12 prior sweat lodges, then -- then that's what
13 happens. And I just want to say that you need to
14 be aware of that.

15 Also with regard to both Hamiltons, there
16 will not be any cross-examination regarding tax
17 matters or anything of that. I just don't find
18 that that's appropriate under Rule 608. Marginal
19 relevance. And under 403 just not permissible.

20 With regard to Mrs. Hamilton -- and this
21 really follows what I said before -- there will not
22 be a discussion or testimony regarding the
23 Daniel P. matter. It was mentioned by the defense.
24 That itself opens up a minitrial, the potential for
25 people discussing hearsay.

1 I understand that Ms. Hamilton had direct
2 observation. There was testimony to that effect.
3 But that was a remote incident. It was four years
4 before. I've mentioned the problem of causation
5 that has now been raised, potential problems. So
6 that -- that's not going to be discussed.

7 Again, that's something if -- that may be
8 discussed or there may be testimony about if the
9 door is open on cross-examination. I just -- just
10 wanted to say that. I don't want any
11 misunderstanding about that.

12 I've really said this, but I want to
13 emphasize that there's been hours -- I think in the
14 defense pleading they talked about days, but hours
15 of testimony regarding prior sweat lodges in '07
16 and '08, a great deal of testimony about
17 comparisons. It really is cumulative. And I think
18 in looking at Rule 611, it's time to really look at
19 Rule 611 considerations.

20 Counsel, those are the rulings.

21 Anything else, Mr. Hughes?

22 MR. HUGHES: Your Honor, just for
23 clarification. I'll be doing the examination of
24 Ms. Hamilton. I want to make sure I don't run
25 afoul of the Court's rulings.

1 I understand obviously I can't ask her
2 about any problems she may have observed any year
3 other than 2009. I had hoped to ask her a little
4 bit just about the general history of when did
5 Mr. Ray start bringing his events to Angel Valley,
6 how many people did he bring each year, questions
7 like that.

8 But I will steer away from, not ask any
9 questions about whether there were any problems in
10 those years, anything along those lines.

11 I just want to make sure I can ask her
12 some questions about the general history of -- of
13 her relationship with Mr. Ray and -- and with the
14 events being held on the property.

15 THE COURT: Ms. Do, are you -- who's going to
16 be cross-examining?

17 MR. LI: I will. Our position is provided
18 that -- that the witness is instructed by counsel
19 not to blurt out all the various rational --
20 rationalizations for why she did one thing versus
21 another. Because these witnesses, as the Court has
22 seen, do have a tendency to just say whatever, want
23 to get their particular message out there.

24 And if it's simply did Mr. Ray contract
25 with you in 2003, 2004, 2005, 2006, 2007, 2008 and

1 hold the Spiritual Warrior seminar there, that's
2 fine. But she -- she has a tendency to say things
3 like, well -- you know -- in 2005 we thought there
4 was a problem so we weren't sure whether we wanted
5 to do it in 2006.

6 And I just want to make sure that we
7 don't -- you know -- inadvertently run into the
8 ruling that the Court has just made.

9 THE COURT: Mr. Li, you made that point last
10 week, and the state acknowledged that their -- with
11 any witness, both sides need to be aware of any --
12 with any witness. And there was something that
13 came up yesterday.

14 MR. LI: And that's all I -- that's the reason
15 why --

16 THE COURT: And that's the kind of thing
17 you're talking about.

18 Mr. Hughes.

19 MR. HUGHES: Your Honor, in anticipation of
20 Mrs. Hamilton might have been on the stand
21 yesterday, I'd spoken to her the night before and
22 thought this might be the Court's ruling. So I did
23 read her the riot act, so to speak, then. And I
24 will do that again before she gets on the stand,
25 that I will tell her no way, shape, or form do any

1 of my questions ask her about problems or issues
2 that she's had with Mr. Ray in prior years, and
3 that, quite honestly, the Court's ruled that that's
4 not relevant from her and she's not to talk about
5 that.

6 THE COURT: In terms of general background,
7 it's admissible. My view -- I've said this and
8 I -- is I want the jury to have relevant evidence
9 and to be able to -- to decide factual issues. And
10 they have to have a framework.

11 Anything else, Counsel?

12 Ms. Do.

13 MS. DO: Yes, Your Honor. I just wanted to
14 get a little bit more guidance since I'm
15 cross-examining Mr. Hamilton.

16 The Court has heard under direct
17 examination a lot of testimony from Mr. Hamilton
18 regarding the exhibits of the tarps and the
19 materials. It was my position yesterday, and the
20 Court stated I could handle this on cross, that
21 Mr. -- I'm sorry -- Mr. Hamilton lacks personal
22 knowledge and foundation for a lot of the testimony
23 he gave yesterday.

24 And I -- I had intended this morning to
25 go into that with him to establish that he was not

1 present for the construction or the take down of
2 any sweat lodges from 2005 up until the
3 October 8, 2009, sweat lodge.

4 I don't believe that runs afoul of the
5 Court's ruling this morning. But I just wanted to
6 make sure that is what the Court agrees with.

7 THE COURT: I want to hear both sides before I
8 say anything.

9 Ms. Polk.

10 MS. POLK: May I have a moment, Your Honor?

11 THE COURT: Yes.

12 MS. POLK: Your Honor, I don't see it as a
13 problem. I think fair cross-examination to
14 establish what this witness personally knows and
15 doesn't know is appropriate.

16 MS. DO: Thank you.

17 THE COURT: Yes. I -- that's my view. I just
18 want to hear both sides before --

19 MS. DO: Thank you.

20 And then the Court indicated this morning
21 that there should be no cross-examination on the
22 tax issue. We understood that that was the Court's
23 ruling, I think handed, out on --

24 THE COURT: I actually received material after
25 that. And I said I'd read it, and I did. And then

1 I also listened to the direct. And so I'm
2 factoring all that in because I -- I left that open
3 because Mr. Li had filed the additional
4 information. And that's why I just wanted to
5 clarify.

6 MS. DO: All right. Thank you. I understand
7 that.

8 On direct examination Ms. Polk, kind of
9 surprisingly, did go into the area even though the
10 Court had ruled at that stage that there should be
11 no testimony regarding tax issues.

12 And now the jury has heard that -- you
13 know -- they run a 501(c)(3). They've heard about
14 a November 2008 IRS. There was testimony regarding
15 the financial affects -- the alleged financial
16 affects of the sweat lodge conducted by JRI on
17 Angel Valley.

18 So I need to know, is the Court not
19 allowing me to go over the areas that were covered
20 on direct?

21 THE COURT: What I -- I don't see as a basis
22 for impeachment for not filing a tax return or
23 something like that. I -- I -- that's what I was
24 talking about. I assumed that Ms. Polk was doing
25 that just to indicate that that's not a place to

1 go.

2 Ms. Polk?

3 MS. POLK: That's correct, Your Honor.

4 THE COURT: So I don't know what --

5 MS. DO: Well, I do not intend to, Your Honor,
6 ask this witness whether or not he has filed
7 federal income tax for any of the years. But I
8 think that it's fair cross-examination given that
9 Ms. Polk has asked the witness regarding the
10 various corporate structure of Angel Valley
11 Ministries versus Angel Valley Retreat Center.

12 The witness brought up himself the IRS
13 audit. So without asking him that question of
14 whether or not he's actually filed income taxes, am
15 I permitted to go over the areas that were covered
16 on direct?

17 THE COURT: There had already been testimony
18 suggesting there could be a problem there. So now
19 it's been addressed. I don't -- I don't understand
20 what the purpose of that would be for that. I'm
21 not seeing that opening up this area when it had
22 been opened up on cross through another witness to
23 some extent. But why? What would be the relevance
24 of that?

25 MS. DO: Well, I think that -- you know --

1 there is an impression before this jury that this
2 is a legitimately run 501(c)(3) nondenominational
3 church. And as the witness stated, it wasn't until
4 August 2008 that he began to run his business under
5 an LLC. So from the years 2003 to 2008,
6 essentially, income that was generated was under
7 the tax exemption of the 501(c)(3).

8 There was testimony by this witness on
9 direct examination of the costs, for example, the
10 JRI retreat in October, which for five days
11 generated income of 107.

12 I think it is relevant in terms of the
13 witness's credibility. And I certainly wasn't
14 going to do that given the Court's ruling on
15 Wednesday. But it's an area that's gone into under
16 direct.

17 THE COURT: The cost of the seminar and to
18 people, that's come up. And that's -- that's a
19 subject. But in terms of getting into the fine
20 points of tax law and the nature of income and how
21 it should be classified, no.

22 MS. DO: All right. Thank you.

23 I think that was it, Your Honor.

24 THE COURT: Okay. Then the jury will be here
25 at 9:15. I hope we can start right about then.

1 Thank you.

2 (Recess.)

3 (Proceedings continued in the presence of
4 jury.)

5 THE COURT: The record will show the presence
6 of the defendant, Mr. Ray; the attorneys, the jury.
7 Mr. Hamilton has returned to the witness stand. He
8 has previously been sworn, of course.

9 And, Ms. Polk, did you have further
10 direct?

11 MS. POLK: Not at this time. No.

12 THE COURT: Thank you.

13 Ms. Do.

14 MS. DO: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. DO:

17 Q. Good morning, Mr. Hamilton.

18 A. **Good morning.**

19 Q. Let me reintroduce myself. My name is
20 Truc Do. I represent Mr. Ray. You and I actually
21 have met on one occasion before today; correct?

22 A. **Yes.**

23 Q. And I believe the date of that meeting
24 was April 6, 2011?

25 A. **Okay.**

1 Q. Does that sound about right to you?
 2 A. Yes.
 3 Q. It was recent?
 4 A. Yes.
 5 Q. And it occurred actually in this
 6 courtroom -- or courthouse, rather; correct?
 7 A. Yes.
 8 Q. You and I, along with Mr. Kelly, went
 9 over to the building across the parking lot and we
 10 had an interview; correct?
 11 A. We did.
 12 Q. And it was a brief one, about 20 minutes?
 13 A. Yes.
 14 Q. And on that date your attorney was
 15 present; correct?
 16 A. Correct.
 17 Q. She's also in court today -- the lady in
 18 the back?
 19 A. Correct.
 20 Q. Her name is Tosca Henry?
 21 A. Yes.
 22 Q. She was also here during your direct
 23 examination yesterday; correct?
 24 A. Yes.
 25 Q. At that interview on April 6, 2011,

1 Ms. Polk was there; correct?
 2 A. Yes.
 3 Q. Mr. Hughes was there?
 4 A. Yes.
 5 Q. And also Detective Diskin?
 6 A. Yes.
 7 Q. Is that correct?
 8 And you saw on the table three tape
 9 recorders. Do you remember that?
 10 A. I do.
 11 Q. And so there were three people
 12 tape-recording that interview; correct?
 13 A. Correct.
 14 Q. And on that date when I had some
 15 questions for you, I did explain to you that it was
 16 not a formal deposition but you were to tell the
 17 truth; correct?
 18 A. As best I could. Yes.
 19 Q. All right. And you understand at any
 20 time that anyone asks you questions regarding this
 21 case, you should tell the truth; correct?
 22 A. Correct.
 23 Q. And so as you have been on this witness
 24 stand since yesterday, you understand that the
 25 testimony you're giving to this jury has to be

1 truthful; correct?
 2 A. Correct.
 3 Q. And truthful means not only telling the
 4 truth and not lies, but it also means being
 5 accurate; correct?
 6 A. Yes.
 7 Q. It means giving the -- the jury facts in
 8 your testimony that's based upon what you know;
 9 correct?
 10 A. Correct.
 11 Q. And what you know is based upon what you
 12 see with your own eyes; correct?
 13 A. Correct.
 14 Q. Or what you do by your own actions;
 15 correct?
 16 A. Correct.
 17 Q. It's not going to be based upon
 18 speculation; correct?
 19 A. Correct.
 20 Q. Or on hearsay; correct?
 21 A. Correct.
 22 Q. Or on assumption?
 23 A. Correct.
 24 Q. Okay. So it's just as important that you
 25 give the jury truthful information as it is not to

1 give them sloppy testimony; correct?
 2 A. Correct.
 3 Q. And by "sloppy," I mean giving the jury
 4 testimony that's based upon something that's not
 5 observed by you. Correct?
 6 A. Correct.
 7 Q. Okay. Now, on April 6, 2011, I asked you
 8 a lot of questions regarding you being physically
 9 present during the construction of any sweat lodges
 10 on Angel Valley.
 11 Do you remember that?
 12 A. I do.
 13 Q. And you, in fact, told me, along with
 14 Ms. Polk and Mr. Hughes present, that you were not
 15 physically present for the construction of any
 16 sweat lodge on Angel Valley; correct?
 17 A. Correct.
 18 Q. And that would include the year 2005;
 19 correct?
 20 A. Correct.
 21 Q. 2006?
 22 A. Correct.
 23 Q. 2007?
 24 A. Correct.
 25 Q. 2008?

1 **A. Correct.**
 2 **Q.** And 2009?
 3 **A. Correct.**
 4 **Q.** So you were never physically present when
 5 any sweat lodge was constructed on Angel Valley;
 6 correct?
 7 **A. There was -- may I answer that in a**
 8 **different than yes or no?**
 9 **Q.** Sure. Do you need to explain?
 10 **A. I do.**
 11 **Q.** Go ahead.
 12 **A. I shared yesterday that on -- it was**
 13 **in 2008. I drove by the sweat lodge when they were**
 14 **building it, and I saw the -- the willow branches**
 15 **in the back of the truck, said hi and kept going.**
 16 **So I don't consider that being present while they**
 17 **were building.**
 18 **Q.** Thank you. And I was going to ask you
 19 that.
 20 With the exception of that moment where
 21 you drove by the construction of the sweat lodge
 22 structure in September of 2008 in a golf cart, you
 23 were never physically present when any other sweat
 24 lodges were being built; correct?
 25 **A. Correct.**

1 **Q.** And that moment when you drove by in the
 2 golf cart, would you say that that was a fleeting
 3 moment?
 4 **A. It was.**
 5 **Q.** You just drove right by; correct?
 6 **A. No. I drove by and I stopped, said hi,**
 7 **and then kept going.**
 8 **Q.** And what you observed, all that you
 9 observed, was Ted and Debbie Mercer taking the
 10 willow branches out of the truck; correct?
 11 **A. And I saw Brian Horburg doing something.**
 12 **He was the Native American that was there to build**
 13 **the lodge.**
 14 **Q.** You mean Brian Hornbeck?
 15 **A. Hornbeck. Yes.**
 16 **Q.** Okay. And we'll talk about Mr. Hornbeck.
 17 But he's somebody that Mr. Palish hired --
 18 correct? -- to build that sweat lodge --
 19 **A. Yes.**
 20 **Q.** -- structure?
 21 **A. Yes.**
 22 **Q.** All right. So, in fact, on
 23 April 6, 2011, you told me and Mr. Kelly and with
 24 the prosecutors present that you and Amayra
 25 Hamilton took a, quote, unquote, back seat to the

1 day-to-day operations; correct?
 2 **A. Yes.**
 3 **Q.** And that was in 2007 and 2008 when you
 4 had Gary Palish, the general manager, running the
 5 day-to-day operations; correct?
 6 **A. Correct.**
 7 **Q.** So to be clear, then, you have never
 8 personally seen the kiva -- what was -- what's been
 9 referred to as the "kiva," the wood frame, being
 10 put together in any years in Angel Valley; correct?
 11 **A. Well, you started in 2005.**
 12 **Q.** Yes.
 13 **A. 2003, 2004, yes, I did.**
 14 **Q.** Okay. 2005 and on?
 15 **A. No.**
 16 **Q.** You've never seen the wooden frame
 17 actually be put together; correct?
 18 **A. No, I didn't.**
 19 **Q.** Since you've never been present at any
 20 sweat lodge construction from 2005 to 2009, you
 21 would also have no personal knowledge of how the
 22 blankets and the tarps were laid over the wooden
 23 frame on any given sweat lodge; correct?
 24 **A. No, I would not.**
 25 **Q.** So you wouldn't know; right?

1 **A. I know what it was supposed to be. But I**
 2 **was not physically looking at it with my own eyes.**
 3 **Q.** Right. And I understand. And this goes
 4 back to where we started today. You may have
 5 beliefs or you may have opinions, but I want you to
 6 give the jury what you know.
 7 Okay?
 8 So were you physically present in any
 9 construction of a sweat lodge where you would know
 10 how the blankets and the tarps were layered over
 11 that wooden frame?
 12 **A. No.**
 13 **Q.** You would also not know whether or not
 14 from 2005 to 2009 the same tarps and the same
 15 blankets were used because you were not physically
 16 present; correct?
 17 **A. I was not physically present. But I was**
 18 **the one buying them, so I would know from that**
 19 **perspective.**
 20 **Q.** I understand that. And, again, that's
 21 based upon a belief because you bought them. But
 22 other people went and grabbed the materials;
 23 correct?
 24 **A. Correct.**
 25 **Q.** And other people layered the materials

1 over the wooden frame; correct?
 2 **A. Correct.**
 3 **Q.** And you were not present to see those
 4 other people do that; correct?
 5 **A. Correct.**
 6 **Q.** Okay. So you have no personal knowledge
 7 in terms of 2005 to 2009 how any blanket or how any
 8 tarp was layered over a given wooden frame;
 9 correct?
 10 **A. Other than seeing photographs of them,**
 11 **no.**
 12 **Q.** Okay. I want you to leave out the
 13 photographs. We're talking about what you see with
 14 your eyes at the moment.
 15 Okay?
 16 You've never seen how any particular
 17 person -- let's use Ted and Debbie Mercer. You've
 18 never actually seen Ted and Debbie Mercer go to the
 19 pump house and get the materials; correct?
 20 **A. No.**
 21 **Q.** So you wouldn't know if they grabbed all
 22 of the materials or some of it; correct?
 23 **A. Correct.**
 24 **Q.** You wouldn't know if one year they
 25 grabbed different materials than the year before;

1 correct?
 2 **A. No, I would not.**
 3 **Q.** And you certainly wouldn't know how they
 4 layered the materials in one year to the next year
 5 to the next year; correct?
 6 **A. No. I would know. I knew one layer, the**
 7 **top. The brown layer I knew every year.**
 8 **Q.** Okay. With the exception of the brown
 9 layer -- and you believe, as you testified to this
 10 jury, that that brown rubber -- it's been referred
 11 to as the "rubber deal" -- was used from 2005
 12 to 2009?
 13 **A. Pretty much at that time. I'm not sure**
 14 **whether it was 2005. I know 2006 it was. But I'm**
 15 **not 100 percent sure in 2005.**
 16 **Q.** Okay. So you're not telling this jury
 17 that that brown rubber deal was first used in
 18 about 2008; is that correct?
 19 **A. It was used before then.**
 20 **Q.** Okay. Other than that brown tarp that
 21 went over the entire structure, you wouldn't know
 22 what went underneath it; correct?
 23 **A. No.**
 24 **Q.** Because you weren't there.
 25 **A. Correct.**

1 **Q.** You, in fact, hired or employed people to
 2 build the structure; correct?
 3 **A. Correct.**
 4 **Q.** And over the years those people would
 5 change; correct?
 6 **A. Correct.**
 7 **Q.** In 2007 it was Gary Palish who oversaw
 8 the construction; is that correct?
 9 **A. Correct.**
 10 **Q.** And Gary Palish, as the general manager,
 11 hired different folks to do it?
 12 **A. Correct.**
 13 **Q.** And then Gary Palish left. And in 2009
 14 you subcontracted Ted and Debbie Mercer to,
 15 basically, build the structure; correct?
 16 **A. Correct.**
 17 **Q.** Now, same thing. When a structure is
 18 taken down after a ceremony has been completed, you
 19 also have not been physically present; correct?
 20 **A. I would drive by it and see the blankets**
 21 **laying out on the ground drying or hanging on the**
 22 **frame to dry, but I did not -- I cannot say, oh,**
 23 **yeah. I saw Ted take this blanket and put it**
 24 **there. No.**
 25 **Q.** Right. Okay. So you were not physically

1 involved in taking down any sweat lodge except for
 2 the October 8, 2009, one; correct?
 3 **A. Correct.**
 4 **Q.** We'll talk about that one. But you were
 5 not physically present when any prior sweat lodges
 6 were taken down; correct?
 7 **A. Correct.**
 8 **Q.** You might see the tarps after the fact
 9 laying out in the sun; correct?
 10 **A. Correct.**
 11 **Q.** As far as the ceremonies are concerned,
 12 you also from 2005 to 2009 when folks came onto
 13 your land and rented the facilities, including the
 14 sweat lodge -- you weren't present for the
 15 ceremony; correct?
 16 **A. Correct.**
 17 **Q.** And that would include the
 18 October 8, 2009, ceremony; correct?
 19 **A. Correct.**
 20 **Q.** In fact, I understood -- you told me on
 21 April 6, and I believe you testified to it
 22 yesterday, that with regard to October 8, you
 23 didn't come down until you heard the helicopters.
 24 Correct?
 25 **A. Correct.**

1 Q. So in terms of the after ceremonies, you
2 had no personal involvement; right?
3 A. **Correct.**
4 Q. You hired people such as Ted and Debbie
5 Mercer to build the fire to heat the rocks;
6 correct?
7 A. **Correct.**
8 Q. You hired folks like Ted and Debbie
9 Mercer to go out and collect the rocks on your
10 land; correct?
11 A. **Correct.**
12 Q. Folks like Rotillo Vasquez --
13 A. **Yeah.**
14 Q. To cut up the wood that you directed;
15 correct?
16 A. **Correct.**
17 Q. Now, given all that testimony,
18 Mr. Hamilton, yesterday you were asked a series of
19 questions by Ms. Polk about the contents of some
20 cans. Do you remember that?
21 A. **I do.**
22 Q. Let me take one out as an example.
23 This one is 901. And I believe all the
24 cans were marked 899, 900, 901, and 902.
25 Now, first of all, have you ever seen

1 this can before yesterday?
2 A. **No.**
3 Q. And so when it was opened up in front of
4 the jury, some contents were removed; correct?
5 A. **Correct.**
6 Q. Had you ever seen the contents in the can
7 in the condition you saw yesterday before
8 yesterday?
9 A. **No.**
10 Q. It was first time; correct?
11 A. **Correct.**
12 Q. So when you took out the contents and you
13 stood in front of the jury with Ms. Polk and you
14 went through the layers, you weren't trying to tell
15 the jury that that was the exact laying that
16 occurred on the October 8, 2009, sweat lodge;
17 correct?
18 A. **I was attempting to tell the jury what**
19 **the products were that we were overlaying.**
20 Q. Okay. So what you were trying to explain
21 to the jury is what you removed from the can;
22 correct?
23 A. **Correct.**
24 Q. But you have no basis, no personal
25 knowledge, because you weren't present in '05 to

1 '09, including '09, October 8th, '09, to tell this
2 jury whether or not the condition of those contents
3 is the exact condition of the sweat lodge on
4 October 8th; correct?
5 A. **Correct.**
6 Q. You don't know that; correct?
7 A. **I know how it was supposed to be, but I**
8 **did not physically see them layer it. I saw the**
9 **layers when I pulled it out one by one.**
10 Q. Okay. I just want to make sure that
11 we're not giving sloppy testimony. So you can't
12 tell this jury, based upon your personal knowledge,
13 whether the conditions of those materials in these
14 cans are the exact same conditions of the tarps and
15 materials as it existed on the sweat lodge
16 structure October 8, 2009; correct?
17 Do you understand my question?
18 A. **No.**
19 Q. Okay. Let me try and rephrase it.
20 Because you weren't there, Mr. Hamilton, you can't
21 tell this jury that when you removed the contents
22 the order of the layering is the same as the order
23 on October 8, 2009; correct?
24 A. **Correct.**
25 Q. Because you weren't there, you can't tell

1 this jury whether the contents from those cans are
2 in the same condition as they existed on
3 October 8, 2009; correct?
4 A. **Correct.**
5 Q. In fact, are you aware -- do you know
6 whether or not those cans, those four cans with the
7 materials inside, came from a lab in Phoenix? Do
8 you know that?
9 A. **The only thing I know, I saw cans here.**
10 **That's all I know.**
11 MS. POLK: Objection. Mischaracterization
12 of --
13 THE COURT: Sustained.
14 Q. BY MS. DO: What I'm asking you,
15 Mr. Hamilton, is prior to seeing those cans
16 yesterday, did you know where they were?
17 A. **No.**
18 Q. Did you know what had been done, if
19 anything, to the contents?
20 A. **No.**
21 Q. So you have no idea whether or not
22 solvents were added to the materials?
23 A. **I have no idea.**
24 Q. You have no idea whether solvents were
25 added to the materials and heated up to determine

1 the presence of toxins; correct?
 2 **A. Correct.**
 3 **Q.** Okay. So when you showed the jury those
 4 materials, it's not accurate to say that those
 5 replicate or those show what we had on
 6 October 8, 2009; correct?
 7 Let me ask you this, Mr. Hamilton: You
 8 didn't cut those tarps, did you?
 9 **A. I did not.**
 10 **Q.** You didn't put them in the cans?
 11 **A. I did not.**
 12 **Q.** Somebody else did?
 13 **A. They did.**
 14 **Q.** And that person is better qualified to
 15 testify to the contents; correct?
 16 **A. Correct.**
 17 **Q.** So when you told this jury yesterday in
 18 answer to Ms. Polk's question that the contents of
 19 those cans are, quote, unquote, the same coverings
 20 used in sweat lodges from 2006 to 2009, that was a
 21 bit of sloppy testimony, wasn't it?
 22 **A. It was not.**
 23 **Q.** Let me -- let me rephrase so you
 24 understand what I mean.
 25 When you said they were the same

1 coverings used in 2006 to 2009, you weren't telling
 2 the jury that you knew, in fact, that the same
 3 order, the same materials, were used in each of
 4 those years because you were not physically
 5 present; correct?
 6 **A. I was not physically there. No.**
 7 **Q.** Okay. So when you said to the jury they
 8 were the same coverings in 2006 to 2009, that was
 9 an assumption on your part; correct?
 10 **A. Based on what I saw, they were the same**
 11 **things that I bought.**
 12 **Q.** The same things you bought but not you
 13 putting it on the sweat lodge; correct?
 14 **A. No. I did never -- I never put them on.**
 15 **Q.** Okay. Now, let me move on.
 16 I do understand that -- that Angel Valley
 17 is very important to you and -- and your wife.
 18 Correct?
 19 **A. Yes.**
 20 **Q.** It means a lot to you; correct?
 21 **A. It does.**
 22 **Q.** And after this tragedy occurred on your
 23 property October 8, 2009, there was a lot of public
 24 scrutiny; correct?
 25 **A. Correct.**

1 **Q.** That came to you and your wife; correct?
 2 **A. Correct.**
 3 **Q.** That came to the land that you loved;
 4 correct?
 5 **A. Correct.**
 6 **Q.** And by public scrutiny, is it fair to say
 7 that there was a lot of negative public attention?
 8 **A. It was both.**
 9 **Q.** Both. All right. You got some support;
 10 correct?
 11 **A. Correct.**
 12 **Q.** But you talked about -- and we'll get
 13 back to this -- a lawsuit that you filed against
 14 Mr. Ray and JRI because you suffered a loss of
 15 income and a loss of reputation; correct?
 16 **A. Correct.**
 17 **Q.** And that was based upon the fact that
 18 immediately after this tragedy occurred there was a
 19 lot of media exposure for you, your wife, and the
 20 land; correct?
 21 **A. Correct.**
 22 **Q.** And there were a lot of news articles and
 23 a lot of TV news coverage -- correct? -- of this
 24 incident?
 25 **A. Correct.**

1 **Q.** And you found yourself, you and your
 2 wife, sort of in the -- in the mix of things in the
 3 public eye; correct?
 4 **A. Correct.**
 5 **Q.** And you heard things like the sweat lodge
 6 structure was, quote, unquote, makeshift; correct?
 7 **A. Correct.**
 8 **Q.** And that made you and your wife cringe,
 9 didn't it?
 10 **A. All truths are true to the people who**
 11 **hold them. So yeah, if that's their truth.**
 12 **Q.** No. I understand. I'm asking how you
 13 and your wife responded. That made you cringe
 14 because you did not believe it was makeshift;
 15 correct?
 16 **A. No. We knew it was not makeshift.**
 17 **Q.** Right. And it made you cringe to hear
 18 people make that accusation; correct?
 19 **A. Did I love it? No.**
 20 **Q.** All right.
 21 **A. Did I accept it? Yes.**
 22 **Q.** You also heard in the aftermath the
 23 public scrutiny that you and your wife and the land
 24 received, that people were saying the sweat lodge
 25 structure was faulty; correct?

1 **A. Some people did.**
 2 **Q.** You also heard things like the design of
 3 the structure was defective; correct?
 4 **A. Correct.**
 5 **Q.** That it didn't have a permit; correct?
 6 **A. Correct.**
 7 **Q.** And these are all obviously accusations
 8 that, while you accept people believe it, you deny;
 9 correct?
 10 **A. No. I accept my truth.**
 11 **Q.** And your truth is that it's none of these
 12 things?
 13 **A. My truth is my truth. You're talking**
 14 **about somebody else talking. I'm talking about**
 15 **mine.**
 16 **Q.** Right. And I'm asking you what you
 17 believe, Mr. Hamilton.
 18 So you do not believe that the structure
 19 was makeshift?
 20 **A. The structure was sound.**
 21 **Q.** So it was not makeshift?
 22 **A. It was not.**
 23 **Q.** Okay. And you believe that the structure
 24 was not defectively designed; correct?
 25 **A. It was not.**

1 **Q.** Okay. Now, in all these accusations that
 2 were difficult for you and your wife to hear, they
 3 came immediately after the accident; correct?
 4 **A. Correct.**
 5 **Q.** That night you heard those accusations;
 6 correct?
 7 **A. No. Not that night.**
 8 **Q.** The next day; correct?
 9 **A. The next morning. Yes.**
 10 **Q.** Okay. And the next morning, we're
 11 talking about October 9; correct?
 12 **A. Correct.**
 13 **Q.** You also heard, did you not, in the media
 14 statements being made by the county safety manager,
 15 a guy named Jack Judd? Did you ever hear any
 16 statements made by an individual named Jack Judd?
 17 **A. I know Jack, but I do not remember any**
 18 **statements.**
 19 **Q.** And --
 20 MS. POLK: Your Honor, may we approach?
 21 THE COURT: Yes.
 22 (Sidebar conference.)
 23 THE COURT: Ms. Polk.
 24 MS. POLK: Your Honor, Ms. Do is about to
 25 offer a statement by Jack -- by Mr. Judd that --

1 actually, I'm not sure what she's going to say.
 2 But I'm assuming that the -- it should have been
 3 permitted and it was not.
 4 Unless they bring in Mr. Judd, this is an
 5 area that is purely hearsay, offered to prove the
 6 truth of the matter asserted, and I believe it is
 7 questionable. I think if they put Mr. Judd on the
 8 stand given for facts about what the structure was,
 9 I'm not sure what he would say about whether it had
 10 to be permitted because it's not a clearcut issue.
 11 But, again, whether we're talking about
 12 statements made to the media -- we spent two full
 13 weeks trying to get a jury that was not exposed to
 14 media statements. And Ms. Do is offering
 15 statements made through the media and now hearsay
 16 statements by Mr. Judd.
 17 If they are going to bring in Mr. Judd
 18 and they have not noticed him as a witness, if
 19 they're going to bring him in, then we can hear
 20 what Mr. Judd has to say today. But this is
 21 clearly improper hearsay, and it's offered to prove
 22 the truth of the matter asserted.
 23 THE COURT: Ms. Do.
 24 MS. DO: Your Honor, these statements are not
 25 offered for the truth of the matter asserted. They

1 go to the witness's state of mind and his bias and
 2 credibility. The Court knows that Mr. Hamilton and
 3 his wife tore down the structure and destroyed it
 4 within 48 hours. The state has attempted to
 5 provide an innocent explanation of that, that they
 6 were trying to heal themselves and heal the land.
 7 It is our belief that based upon the
 8 negative public scrutiny that came immediately,
 9 they knew that there were accusations of design
 10 defect, faulty construction, of lack of permit.
 11 That's a reasonable inference in terms of
 12 motivation to destroy the structure and the
 13 evidence. I'm not offering it for the truth of the
 14 matter asserted.
 15 THE COURT: Well, when you bring in specific
 16 names and start saying this and this and this was
 17 said, it's, essentially, just trying to bring in
 18 hearsay, just blatant hearsay.
 19 If it's a question that there are
 20 accusations, I don't have a problem. General
 21 things about accusations, media. And Ms. Polk
 22 didn't object through that initial
 23 characterization. But to actually get in and try
 24 to bring in some expert, in a sense, to say there
 25 is a problem without cross-examination, that's too

1 far.

2 That objection is going to be sustained.

3 You cannot bring in this straight hearsay
4 statements like that, Ms. Do. Can't do it. In
5 terms of asking about accusations, yes. But you're
6 getting into names, and you're going to get into a
7 report, about what a report might say, did you know
8 this or know that? No.

9 MS. DO: Just so the Court knows, I'm not
10 referring to a report. This was a news article
11 that came out --

12 THE COURT: No.

13 MS. DO: Let me please make my record.

14 THE COURT: I don't think I've ever cut
15 anybody off ever.

16 Go ahead.

17 MS. DO: Thank you.

18 This information came from a news article
19 that came out, I believe, the day after the
20 accident. I have a good-faith basis to believe
21 that this witness did, in fact, see that article.
22 He knows who Jack Judd is.

23 I'm not offering this for the truth of
24 the matter asserted, Your Honor. And, frankly,
25 it's not disputed the structure was not permitted.

1 This all goes to establishing the foundation of
2 credibility and bias for this witness and the
3 others who took down the sweat lodge.

4 I would note yesterday that over my
5 objection the Court did allow Ms. Polk to go into
6 hearsay statements of my client with specifics to
7 prove a state of mind that I thought was quite
8 tenuous.

9 But I understand the Court's ruling, and
10 I'll rephrase.

11 THE COURT: I probably have cut people off
12 before. I'll give you a chance to make a record.
13 Touchy area. It's a fine line.

14 Yes. You can explore motive and bias.
15 And if there are these accusations, you can do
16 that. Not -- not bringing in some kind of hearsay
17 statement and then, basically, certifying wasn't
18 this a problem.

19 MS. DO: I would also note, Your Honor --

20 THE COURT: I wasn't quite done.

21 MS. DO: Oh. I'm sorry.

22 THE COURT: Go ahead.

23 MS. DO: I'm sorry. I thought you were done.

24 Yesterday during direct examination

25 Ms. Polk elicited that inspectors came on the land.

1 And one of these inspectors, I believe, is Jack

2 Judd. So this is an area that's gone into in a
3 direct examination. Quite frankly, this particular
4 issue is critical to the defense.

5 This is the party that we believe, if
6 anyone is culpable, should be because they designed
7 the sweat lodge structure and built it.

8 So if the Court is inclined to cut me
9 off, I understand, and I'll rephrase my questions
10 and keep it general.

11 THE COURT: Here's what we'll do: We'll go
12 question by question. That's the only way to do it
13 in this situation.

14 Ms. Polk.

15 MS. POLK: Your Honor, first of all, I do not
16 believe that Mr. Judd visited the property. I
17 don't know whether he did or not. Clearly it is
18 hearsay. The witness has testified that it was not
19 permitted. To bring in an out-of-court statement
20 to suggest that someone from the planning and
21 zoning department opined that it had to be
22 permitted is hearsay.

23 If they want to argue that it had to be
24 permitted and it was not, they need to bring in the
25 witness who would say that and would be subject to

1 cross-examination.

2 Because ultimately, again, this issue is
3 not black and white on whether or not it should be
4 permitted. The -- this is -- it's the same thing
5 with respect to the Rick Haddow report, Your Honor.

6 They told the Court yesterday they don't
7 intend to bring Rick Haddow, which is interesting.
8 They're claiming that what he has to say is
9 relevant. They want to cross-examine witnesses on
10 what Mr. Haddow says in his report, but they don't
11 intend to bring him in.

12 If information is important to the
13 defense, they need to bring in the appropriate
14 witness to establish that information and be
15 subject to cross-examination instead of trying to
16 hearsay in evidence for the truth of the matter
17 asserted.

18 THE COURT: I concur. And I just have to hear
19 the questions. So --

20 MS. DO: Again, Your Honor, I'm not offering
21 it for the truth of the matter asserted. It goes
22 to motive, bias, and credibility. If the Court
23 wants to give a limiting instruction that these
24 statements are not being offered for the truth,
25 that's fine. Because that's certainly not the

1 purpose for which I'm asking the questions.
 2 It's relevant to his state of mind and
 3 what he knew the accusations were following the
 4 aftermath of this accident.
 5 THE COURT: I understand the point.
 6 Go ahead and continue.
 7 MS. DO: Thank you.
 8 (End of sidebar conference.)
 9 Q. BY MS. DO: Mr. Hamilton, I was asking
 10 you questions regarding the negative public
 11 attention that came to you, your wife, and Angel
 12 Valley in the aftermath of this accident.
 13 Do you remember those -- those questions?
 14 A. I do.
 15 Q. Okay. And what I'm asking you is -- and
 16 I'm not suggesting these statements are true. I
 17 just want to know if in the aftermath of this
 18 accident you became aware that people were
 19 criticizing Angel Valley?
 20 A. They were criticizing everybody.
 21 Q. I understand. But I'm specifically
 22 asking about Angel Valley.
 23 Is that yes?
 24 A. Yes.
 25 Q. And you became aware immediately in the

1 aftermath of this accident that people were
 2 questioning and criticizing the construction of the
 3 sweat lodge; correct?
 4 A. Correct.
 5 Q. And part of that criticism is whether or
 6 not you had a permit for it; correct?
 7 A. Correct.
 8 Q. And you learned about these criticisms,
 9 that I'm sure made you and your wife upset, the
 10 very next day, October 9, 2009; correct?
 11 A. You're generalizing. 2009 we were still
 12 in a state of shock. So I'm not --
 13 Q. My question --
 14 A. I did not pay much attention to the media
 15 then. I'm not sure where you're going, what you
 16 want.
 17 Q. And I'm just asking you questions and if
 18 you can answer them. Okay?
 19 My question to you -- and earlier, I
 20 believe, you testified, yes, on October 9, the very
 21 next day, you learned that there were criticisms
 22 about the sweat lodge construction. Correct?
 23 A. I learned a number of things. But I
 24 cannot say that on October 9th the sweat lodge
 25 construction came up. I cannot say that.

1 Q. You didn't say that earlier?
 2 A. If I did, I did not mean that on that day
 3 that we heard everything we were going to hear over
 4 the last 18 months. No.
 5 Q. And I'm not -- Mr. Hamilton, I'm not
 6 asking you that. I'm asking you specifically, in
 7 the aftermath of this accident on Saturday -- on
 8 Friday, October 9, 2009, you became aware -- and
 9 I'm not asking you for details. You became aware
 10 generally that there was negative public attention
 11 for you and your land; correct?
 12 A. Yes. That I do know.
 13 Q. Part of that negative public attention
 14 were questions about the sweat lodge structure
 15 being, quote, unquote, makeshift?
 16 A. I cannot say that on Friday the 9th that
 17 I heard anything about a makeshift sweat lodge on
 18 that day. Later on, yes. It came out in the
 19 media. But not that day.
 20 Q. Okay. So when I asked you earlier, you
 21 were just simply mistaken; is that right?
 22 A. I was doing the best I could --
 23 Q. Okay.
 24 A. -- to answer your question.
 25 Q. Well, I want to make sure you answer the

1 questions and not speculate. Okay?
 2 So did you also become aware at any point
 3 after the aftermath of this accident on October 8
 4 that there were questions about the use of your
 5 land between commercial and religious?
 6 A. Yes.
 7 Q. Okay. Do you know whether or not that
 8 came to your attention immediately after the
 9 accident?
 10 A. What do you mean by "immediate"?
 11 Q. The next day.
 12 A. No.
 13 Q. The day after?
 14 A. I don't know.
 15 Q. Okay. I'm just asking questions,
 16 Mr. Hamilton.
 17 A. It's challenging because you're -- you're
 18 taking a whole 18-month period where I heard things
 19 and want to condense it the day afterward. I don't
 20 know that.
 21 Q. Well, if you can't, just tell me you
 22 can't. But I'm asking the question of whether or
 23 not you became aware of any of these criticisms the
 24 next day. And I believe when I asked the first
 25 time you said yes.

1 **A. Yes. But when you narrow it down to**
 2 **particulars, no. I can't answer that.**
 3 **Q.** Okay. So that's your testimony now; is
 4 that correct?
 5 **A. Yes.**
 6 **Q.** All right. Now, I understand that you
 7 acquired Angel Valley in 2002. Correct?
 8 **A. Correct.**
 9 **Q.** And that's about 70 acres; correct?
 10 **A. Correct.**
 11 **Q.** And you describe it as being nine miles
 12 southwest of Sedona off Highway 89A; correct?
 13 **A. Correct.**
 14 **Q.** And when you acquired the land in 2002,
 15 you and your wife created a not-for-profit,
 16 nondenominational church called "Angel Valley
 17 Ministries"; is that correct?
 18 **A. No.**
 19 **Q.** What's not correct about it?
 20 **A. We did it in 2004.**
 21 **Q.** In 2004 you and your wife created a
 22 not-for-profit, nondenominational church called
 23 "Angel Valley Ministries"?
 24 **A. Correct.**
 25 **Q.** And you and your wife lead that and you

1 are ordained ministers; correct?
 2 **A. Correct.**
 3 **Q.** And as you told Ms. Polk yesterday,
 4 that's a 501(c)(3) organization; correct?
 5 **A. Correct.**
 6 **Q.** Then you created something that was a
 7 limited liability company called "Angel Valley
 8 Retreat Center"; is that correct?
 9 **A. No.**
 10 **Q.** What's it called?
 11 **A. "Angel Valley Spiritual Retreat**
 12 **Center" --**
 13 **Q.** Okay. Thank you.
 14 **A. -- "LLC."**
 15 **Q.** And that is a for-profit business;
 16 correct?
 17 **A. For profit under the ministry.**
 18 **Q.** Okay. So you -- you --
 19 **A. So it has the same status as the church.**
 20 **Q.** I understand that. The same status. You
 21 mean the same 501(c)(3) status?
 22 **A. No. It has the same benefits.**
 23 **Q.** Got it.
 24 **A. The same connection.**
 25 **Q.** Okay. Now, you met Mr. Ray and his

1 organization, James Ray International, in 2003;
 2 correct?
 3 **A. Correct.**
 4 **Q.** And in that year Mr. Ray's corporation
 5 and the participants stayed at another retreat
 6 center called Enchantment; correct?
 7 **A. Correct.**
 8 **Q.** And, however, they came to Angel Valley
 9 for the Vision Quest; correct?
 10 **A. Correct.**
 11 **Q.** And the sweat lodge structure?
 12 **A. Correct.**
 13 **Q.** Both of which you charged James Ray
 14 International; correct?
 15 **A. We did.**
 16 **Q.** The Vision Quest in 2003 -- would that
 17 have been the same as the Vision Quest in 2009
 18 where you or your wife went out and picked the
 19 spots? If you know.
 20 **A. My wife went out to pick the spots. I**
 21 **did not.**
 22 **Q.** Okay. So anytime you have a Vision Quest
 23 on your land, it's Angel Valley or some person who
 24 works for Angel Valley that maps out the Vision
 25 Quest spots; correct?

1 **A. Amayra does them every year.**
 2 **Q.** All right. So it's not the visitor, like
 3 James Ray or James Ray International, that picks
 4 the spots; correct?
 5 **A. No. But they tell us when they're not**
 6 **the right one.**
 7 **Q.** They tell you or they tell your wife?
 8 **A. They tell my wife. We need them further**
 9 **apart, we need them this, we need them that.**
 10 **Q.** Okay. And, again, back to what we said
 11 earlier. Not hearsay. Did anyone tell you that a
 12 spot was not right?
 13 **A. No.**
 14 **Q.** All right. You charged for the use of
 15 the sweat lodge structure; correct?
 16 **A. Correct.**
 17 **Q.** In 2003 do you remember how much you
 18 charged James Ray International for the use of the
 19 sweat lodge structure?
 20 **A. It was never broken down. The sweat**
 21 **lodge structure went with the overall arrangement**
 22 **that we had.**
 23 **Q.** And how much did that arrangement cost?
 24 **A. I do not know.**
 25 **Q.** You have no estimate?

1 **A. Not right now. No.**
 2 **Q.** Okay. And just so we're clear --
 3 **A. I can get the figures, but I don't have**
 4 **them now.**
 5 **Q.** I understand. So just so we're clear,
 6 Mr. Ray and his corporation came onto Angel Valley
 7 in 2003 and, essentially, rented the sweat lodge
 8 structure for two to three hours that it was in
 9 use; correct?
 10 **A. Correct.**
 11 **Q.** Then he came back -- the corporation came
 12 back in 2004. And this time they stayed on Angel
 13 Valley's property; correct?
 14 **A. Correct.**
 15 **Q.** And it became what was an annual five-day
 16 retreat; correct?
 17 **A. Correct.**
 18 **Q.** And the last one obviously was
 19 October 8, 2009?
 20 **A. Correct.**
 21 **Q.** For each of those years, 2004 to 2009,
 22 the five-day retreat, Angel Valley provided the
 23 lodging; correct?
 24 **A. Correct.**
 25 **Q.** Angel Valley provided facilities like the

1 Crystal Room or the Heart Pavilion; correct?
 2 **A. Correct.**
 3 **Q.** Angel Valley prepared and provided meals;
 4 correct?
 5 **A. Correct.**
 6 **Q.** Angel Valley chose and provided the
 7 Vision Quest spot; correct?
 8 **A. Correct.**
 9 **Q.** Angel Valley built and provided the sweat
 10 lodge structure for each of those years; correct?
 11 **A. Yes. All under the direction of JRI.**
 12 **Q.** What do you mean?
 13 **A. We had a syntax --**
 14 **Q.** Yes.
 15 **A. -- that said, do this, do this, do this,**
 16 **do this, everything down to the minute of what they**
 17 **wanted. And we complied.**
 18 **Q.** Okay. But it was your corporation --
 19 right? -- Angel Valley Ministries or Angel Valley
 20 Retreat Center --
 21 **A. Spiritual Retreat Center.**
 22 **Q.** Spiritual Retreat Center that actually
 23 provided and prepared the meals; correct?
 24 **A. Correct.**
 25 **Q.** All right. And we'll get to this a

1 little bit more later. But you have a philosophy
 2 of a vegetarian diet on your land; correct?
 3 **A. Correct.**
 4 **Q.** And -- and that's what you offer to
 5 visitors and -- and folks who come to Angel Valley;
 6 correct?
 7 **A. Correct.**
 8 **Q.** In 2009, as I understand it, you charged
 9 James Ray International -- or you negotiated in
 10 that contract that we saw, the five-day retreat
 11 would cost \$107,000 based upon a guarantee of 60
 12 folks coming; correct?
 13 **A. I did not sign that contract. I was**
 14 **aware of it afterwards. Yes. In -- beginning**
 15 **of 2009 I was -- when I took back over the control**
 16 **of Angel Valley Spiritual Retreat Center. For the**
 17 **contract, as you see on the date, was, I believe,**
 18 **January of 2008. And I was not involved.**
 19 **Q.** I understand. And we're going to get to
 20 that.
 21 But since it's your land, and you and
 22 your wife own it, that money would come to you;
 23 correct?
 24 **A. No.**
 25 **Q.** To you and your corporation?

1 **A. No.**
 2 **Q.** Who did it go to?
 3 **A. To the corporation. To the entity, the**
 4 **business.**
 5 **Q.** What is the entity?
 6 **A. Angel Valley Spiritual Retreat Center.**
 7 **Q.** And who owns that?
 8 **A. The church.**
 9 **Q.** And who runs the church?
 10 **A. We run the church, but we do not own the**
 11 **church.**
 12 **Q.** Okay. I'm a little bit confused. Let me
 13 walk back a little bit here.
 14 **A. Okay.**
 15 **Q.** The \$107,000 in 2009 went to whom?
 16 **A. Number 1, it wasn't \$107,000.**
 17 **Q.** The 107,000 that was expected. Who would
 18 that have gone to?
 19 **A. Angel Valley Spiritual Retreat Center.**
 20 **Q.** And who owned Angel Valley Spiritual
 21 Retreat Center?
 22 **A. Angel Valley Ministries.**
 23 **Q.** And who owned Angel Valley Ministries?
 24 **A. Nobody owned it. There's a board of**
 25 **directors that run Angel Valley Ministries.**

1 Q. Who's on the board of directors?
 2 A. **The board then is different than the**
 3 **board today.**
 4 Q. What's the board today, Mr. Hamilton?
 5 A. **My wife and I today.**
 6 Q. What was the board in 2009?
 7 A. **There were -- you want the exact names of**
 8 **the people?**
 9 Q. Were you and Amayra Hamilton on the
 10 board?
 11 A. **Yes, we were.**
 12 Q. Were you and Amayra Hamilton on the board
 13 in 2008?
 14 A. **Yes.**
 15 Q. Were you and Amayra Hamilton on the board
 16 in 2007?
 17 A. **Yes.**
 18 Q. 2006?
 19 A. **Yes.**
 20 Q. 2005?
 21 A. **Yes.**
 22 Q. And 2004?
 23 A. **Yes.**
 24 Q. I want to talk a little bit about the
 25 various services that you and your wife offer at

1 Angel Valley.
 2 The jury has heard that James Ray
 3 International, a outside corporation, brought a
 4 group of people to your property for a five-day
 5 retreat. So you do have outside folks,
 6 corporations or groups, come to Angel Valley with
 7 their own retreat program; correct?
 8 A. **We do.**
 9 Q. And whatever it is that they want in
 10 their schedule you accommodate; correct?
 11 A. **To the best of our ability.**
 12 Q. So if they wanted a Vision Quest, you
 13 accommodated that?
 14 A. **Right.**
 15 Q. If they wanted a sweat lodge, you
 16 accommodated that; correct?
 17 A. **Correct.**
 18 Q. Now, in addition to these private outside
 19 groups coming in, Angel Valley also has its own
 20 retreat programs; correct?
 21 A. **Correct.**
 22 Q. You have a website; correct?
 23 A. **Correct.**
 24 Q. And on that website you advertise a
 25 number of different programs; correct?

1 A. **Correct.**
 2 Q. And one of them that I saw is called
 3 "Angel Valley Intensive Transformation and Healing
 4 Program"?
 5 A. **Correct.**
 6 Q. That's a retreat that you offer under
 7 Angel Valley Ministries/Angel Valley Spiritual
 8 Retreat Center; correct?
 9 A. **Correct.**
 10 Q. And if I understand correctly, you
 11 advertise that to be a 7- or 13-day retreat.
 12 Correct?
 13 A. **Correct.**
 14 Q. And participants -- you encouraged
 15 participants to come participate in a 7- or 13-day
 16 retreat to, quote, unquote, dive deeply into their
 17 issues; correct?
 18 A. **Correct.**
 19 Q. And during this 7- or 13-day retreat that
 20 you run, you provide a vegetarian diet; correct?
 21 A. **Correct.**
 22 Q. You provide lodging; correct?
 23 A. **Correct.**
 24 Q. You provide and structure a lot of
 25 meditation in the program; correct?

1 A. **Correct.**
 2 Q. You provide and structure in the program
 3 a lot of writing; correct?
 4 A. **You want to rephrase that?**
 5 Q. You structure in the 7- or 13-day program
 6 that you have writing and journaling assignments;
 7 correct?
 8 A. **No. Not in the term "structure."**
 9 Q. What --
 10 A. **I'd like to explain on the term**
 11 **"structure."**
 12 Q. If you don't like that word, what would
 13 you like to use?
 14 A. **No. I'd like to explain what you mean --**
 15 **or what I mean by a person coming.**
 16 Q. Please do so.
 17 A. **We have an individual right now that's**
 18 **there for a 7-day period -- actually there for a**
 19 **total of 14. And the -- the structure is for this**
 20 **individual to listen to her own heart as she**
 21 **wanders around, goes to the creek, listens to the**
 22 **animals, and has her own intense internal journey**
 23 **of processing through the issues that she's dealing**
 24 **with.**
 25 **This morning I just met her -- and I'm**

1 **doing this because this is what we've done now for**
 2 **many years. It's for people to listen to their own**
 3 **inner guidance, their own inner calling. We never**
 4 **tell anybody, you have to do this, you have to do**
 5 **that, you need to go here, you need to go there.**
 6 **I would wake up in the morning. I would**
 7 **say, here's an idea for you. If it feels right, do**
 8 **it. If it doesn't, don't. So my intentions are**
 9 **not managed or controlled. They are self-guided**
 10 **with us available as people to talk to as they are**
 11 **going through the journey of going into the issues**
 12 **they have.**

13 **Q.** And a lot of these issues that people
 14 come to Angel Valley with are -- and I'm not asking
 15 for you to get into details -- they're -- they're
 16 deep, personal issues; correct?

17 **A. Correct.**

18 **Q.** Difficult issues; correct?

19 **A. Correct.**

20 **Q.** And you offer through these various
 21 programs under Angel Valley Ministries and Angel
 22 Valley Spiritual Retreat Center a program for that
 23 person to work on those issues; correct?

24 **A. To work on it themselves, handle it.**
 25 **Yes.**

1 **Q.** I understand that. But it's a program
 2 for them to work on those issues; correct?

3 **A. Correct.**

4 **Q.** And you offer them guidance and
 5 suggestions; right?

6 **A. Correct.**

7 **Q.** And they take what they want and they
 8 leave what they don't; correct?

9 **A. Correct.**

10 **Q.** You also offer a number of spiritual
 11 services and activities. And we'll talk about them
 12 in details. Is that correct? Spiritual activities
 13 and services; correct?

14 **A. Yes.**

15 **Q.** And those spiritual activities and
 16 services are provided by a group of what you call
 17 "practitioners"; correct?

18 **A. Correct.**

19 **Q.** And the practitioners would include you;
 20 correct?

21 **A. Correct.**

22 **Q.** Amayra Hamilton?

23 **A. Correct.**

24 **Q.** And Fawn Foster?

25 **A. Correct.**

1 **Q.** And you charge for this program; correct?

2 **A. We do.**

3 **Q.** And if I understand, if you stay for
 4 seven days, you charge 3,300. Correct?

5 **A. Correct.**

6 **Q.** If they say for 13 days, you charge
 7 5,500; correct?

8 **A. Correct.**

9 **Q.** I want to talk just little bit about some
 10 of the services that your group of practitioners
 11 offer.

12 You offer something called "intuitive
 13 coaching"; is that right?

14 **A. Correct.**

15 **Q.** And that's --

16 MS. POLK: Your Honor, objection to the
 17 relevance of this line of questioning.

18 THE COURT: Overruled.

19 You may proceed.

20 MS. DO: Thank you, Your Honor.

21 **Q.** Mr. Hamilton, you offer something called
 22 "intuitive coaching"?

23 **A. Correct.**

24 **Q.** And what is that?

25 **A. It's interacting with an individual and**

1 **inviting them to listen to their own intuition,**
 2 **their own inner guidance, and to share what my**
 3 **inner guidance is at that moment with what they**
 4 **bring up.**

5 **Q.** Okay. And that's part of the charge for
 6 the retreat, either 7 or 13 days; correct?

7 **A. Yes.**

8 **Q.** Your wife offers something called
 9 "channeled writing"; correct?

10 **A. Correct.**

11 **Q.** Can you tell the jury what channeled
 12 writing is.

13 **A. Channeled writing is the ability to have**
 14 **an individual go into a meditative space and be**
 15 **quiet and listen to whatever -- whoever the**
 16 **individual wants to talk to.**

17 **For an example, we had a person here**
 18 **about two -- back up. About probably four months**
 19 **ago, five months ago. Her little baby died 44**
 20 **years ago, and she was still carrying with her the**
 21 **grief because she let the little child run into the**
 22 **road.**

23 **And in that process of going into the**
 24 **grief work and the channeled writing, she was able**
 25 **to connect with the spirit of that little child.**

1 **And the child said, Mommy. Don't worry. I'm fine.**
 2 **After 44 years of carrying around the**
 3 **pain of what happened, she was able to release it**
 4 **and not blame herself for it and went on to -- to**
 5 **feel more alive than she's felt in 44 years. She**
 6 **was around, I want to say, 70 years old. But it**
 7 **was magical what occurred in that channeled**
 8 **writing.**

9 Q. Okay. Thank you. I appreciate that.

10 We've -- we've spoken to your wife
 11 before. And I want to make sure I understand
 12 channeled writing. It was explained to us that
 13 channeled writing is where your wife will sit down
 14 with a participant who wanted to connect with what
 15 your wife would describe as a spirit; is that
 16 correct?

17 A. Right. Okay.

18 Q. And she described a spirit, essentially,
 19 as being someone who is dead; correct?

20 A. Correct.

21 Q. And so your wife, in these channeled
 22 writing sessions, would connect with --

23 MS. POLK: Your Honor, object on personal
 24 knowledge of this witness. This is hearsay.

25 THE COURT: Sustained.

1 Q. BY MS. DO: This is a service that you
 2 offer under your program; correct?

3 A. Correct.

4 Q. And so you're familiar with what goes on
 5 in it; correct?

6 A. I am.

7 Q. You've actually -- let me ask. You have
 8 you seen your wife do it?

9 A. I've done it myself.

10 Q. You've done it yourself.

11 So you and your wife offer channeled
 12 writing where, essentially, you sit down with
 13 somebody who's come to Angel Valley, and you
 14 connect with someone from another dimension;
 15 correct?

16 A. They do. They connect. And we also --
 17 there's two simultaneous events going on.

18 Q. Okay.

19 A. It's -- it's about the empowerment aspect
 20 of the individual that is in grief for them to
 21 connect with -- with whomever they connect with.
 22 And I or my wife -- my wife does most of it --
 23 would do her own independent connection.

24 And then when it's all done, after the
 25 individual has had their own experience, then

1 there's a sharing of what is common in both people
 2 doing it independent of one another.

3 Q. But if I understand right, you and your
 4 wife are -- and I'm sorry if this is not the right
 5 word -- the conduits for these messages received.
 6 Correct?

7 A. No.

8 Q. You don't write down messages?

9 A. We do and they do.

10 Q. Okay.

11 A. But we're not the only -- it's not about
 12 what we get.

13 Q. Right.

14 A. It's about what the person gets directly
 15 themselves. It's about them knowing you're not
 16 alone, knowing you can reach out, knowing you can
 17 connect with spirits beyond this realm.

18 Q. I understand that. My question is -- and
 19 I'm -- my question is very specific, Mr. Hamilton.

20 In these channeled -- first of all, in
 21 these channeled writing sessions that you and your
 22 wife conduct, you charge for them; correct?

23 A. Right.

24 Q. You charge for them by the session or by
 25 the hour?

1 A. It depends.

2 Q. Okay. And we'll get to the charges
 3 because I think they're in your contract here.

4 But in these channeled writing sessions
 5 where you charge people, what you're doing is you
 6 are connecting to, with that other person, somebody
 7 from beyond; is that right?

8 A. No. The other person is making their own
 9 connection. We have our connection. They have
 10 their connection. We're not in a conduit for the
 11 other person.

12 Q. Okay. So if your wife has explained it
 13 that way, it would be wrong?

14 MS. POLK: Your Honor, objection. No personal
 15 knowledge of this witness.

16 THE COURT: Sustained.

17 Q. BY MS. DO: Well, you've been there, and
 18 you've done it, and you've seen your wife do it;
 19 correct?

20 A. I've not been with her in her session.

21 Q. Okay. Well, why don't we let Amayra
 22 explain that, then.

23 My question is, you do, in fact, charge
 24 for those services; correct?

25 A. We do.

1 Q. And sometimes you use something --
2 another service that you offer in this retreat
3 program, the 7 or 13 that you charge for, is
4 something called "crystal skulls"; is that correct?

5 A. Correct.

6 Q. Can you tell the jury what crystal skulls
7 are.

8 A. Best example would be in the last Indiana
9 Jones movie where they were going after the
10 particular crystal skull in South America. Crystal
11 skulls are a container for information, for
12 knowledge. And different people that have
13 connected with them feel and have received messages
14 from them.

15 I do not have the same connection and
16 affinity with them as my wife does. So she would
17 be the expert to talk about what she does with
18 those. I'm aware of them. I've had my own
19 connection. But hers are much deeper than my own.

20 Q. And those are also sessions that you
21 charge people for; correct?

22 A. Sometimes we do. Like, every Wednesday
23 evening people -- everyone in the community is
24 welcome to come by where there's no charge for
25 that.

1 Q. You consider all of these spiritual
2 services; right? Spiritual in nature?

3 A. Yes. To the best of my abilities.

4 Q. And you see no -- no issues with charging
5 for those spiritual services; correct?

6 That's simply yes or no.

7 A. It can't -- it can't be answered exactly
8 like a yes or no. I can explain.

9 Q. These are spiritual, services, in your
10 opinion; correct?

11 A. They are.

12 Q. And you charge for them?

13 A. Sometimes we do and sometimes we do not.

14 Q. All right. Fawn Foster. She's also a
15 practitioner. And on your website it says she does
16 something called "inner child card readings";
17 right?

18 A. Correct.

19 Q. What is that?

20 A. You'd have to ask her. I do not do that
21 with her. I've not had a session with her.

22 Q. Okay. That is -- that is a session
23 provided by Ms. Foster for these retreat programs
24 that is charged for; correct?

25 A. Fawn does not charge -- she has not --

1 let's say -- most of the work Fawn does with
2 clients she does not charge for. We do. I -- you
3 know -- if I do something I do, but not Fawn.

4 Q. It is a service by Ms. Foster that's
5 advertised on your website; correct?

6 A. Yes. But it's not -- it's a service
7 that's available, but it doesn't always get charged
8 for.

9 Q. Right. Understood.

10 May I approach, Your Honor?

11 THE COURT: Yes.

12 Q. BY MS. DO: I'm going to hand you a
13 document that is five pages. Top it says, Angel
14 Valley Group Retreat Terms and Conditions,
15 effective August 1, 2009. It's been marked as
16 Exhibit 587.

17 Do you recognize that?

18 A. I do.

19 MS. DO: I sorry. I forgot to show it to
20 Ms. Polk.

21 Q. Mr. Hamilton, I'm going to hand you back
22 Exhibit 587. You do recognize this document?

23 A. I do.

24 Q. That is a standard contract drafted by
25 your entity; correct?

1 A. No.

2 Q. By your lawyers?

3 A. No.

4 Q. By whom?

5 A. It's not a contract.

6 Q. What is it?

7 A. Group retreat terms and conditions.

8 Q. Okay. And it lays out terms and
9 conditions for visitors and participants; correct?

10 A. For group retreats.

11 Q. All right. Now, is that the terms and
12 conditions that you lay out generally for any group
13 retreat?

14 A. When people call on the phone, this is
15 the general rule of thumb that we start with.

16 Q. Okay. Well, let's take a look at that.

17 Your Honor, I'd move for the admission of
18 Exhibit 587.

19 THE COURT: Ms. Polk.

20 MS. POLK: Your Honor, it's not clear to me
21 what this document is, what it pertains to, what
22 the relevance for this case is. Is this a document
23 used with regard to James Ray International?

24 THE COURT: I have to have -- Counsel, bench,
25 please.

1 (Sidebar conference.)

2 THE COURT: Ms. Do.

3 MS. DO: Your Honor, I could lay additional
4 foundation. This is the contract where -- he
5 doesn't want to use that term. But it's a
6 five-page document laying out terms and conditions
7 for group retreats. It is not specific to JRI, but
8 it did apply to JRI because it's effective August
9 2009.

10 It lays out the terms and conditions of
11 the sweat lodge. It lays out the terms and
12 conditions of the various activities that are
13 common, including the ones that occurred during the
14 JRI retreat.

15 THE COURT: I haven't seen it obviously.

16 Ms. Polk.

17 MS. POLK: Is it a document signed by JRI?

18 MS. DO: It's the general contract that lays
19 out the terms and conditions. There is then a
20 specific contract for JRI.

21 It is relevant because it goes into the
22 fact that these terms and conditions that the state
23 has been proffering as to be specific to JRI are
24 not. They apply to anybody that comes to the
25 property.

1 THE COURT: I haven't heard that foundation
2 yet.

3 MS. DO: Okay.

4 THE COURT: So, anyway, at this point,
5 sustained as to foundation.

6 MS. DO: I'll ask a few more questions.

7 THE COURT: If it applies to participants.
8 But I haven't heard that.

9 MS. POLK: Does it have a place on it for JRI
10 to sign?

11 MS. DO: It's not specific to JRI. It's the
12 form that they use for all group retreats. It also
13 applied to JRI, as you saw in the contract you
14 entered yesterday, which is, I think, 885.

15 MS. POLK: Did that contract yesterday refer
16 to this document? I'm not understanding -- did
17 JRI -- does this document that you just gave the
18 witness have a place for people to sign?

19 MS. DO: It does not have a place for people
20 to sign.

21 Let me ask a few more questions, Your
22 Honor.

23 THE COURT: Sustained as to foundation.

24 MS. POLK: Your Honor, while we're here,
25 counsel is asking about other things that are

1 offered at Spiritual Warrior such as the
2 channeling, the card reading, establishing there
3 was a cost for it. I have objected, and the Court
4 overruled my objection on relevance.

5 The state was not allowed to ask about
6 JRI and other events that he held and what the
7 costs were. At this counsel is being allowed to
8 ask this witness about what Angel Valley charges
9 for other non-JRI events. I don't understand.

10 THE COURT: I don't recall that question.

11 MS. POLK: Establishing that they --

12 THE COURT: I'm trying to say what objection I
13 sustained.

14 MS. POLK: When Ms. Do started asking about
15 other things that are offered, including the
16 channeling, I objected, and the Court overruled.

17 THE COURT: Oh. Well, there is an element of
18 relevance, and it's impact on the business and what
19 they do.

20 But anyway, you're concerned at this
21 point future questioning --

22 MS. POLK: I'm concerned about the relevance.
23 I'm concerned about this inquiry into the religious
24 beliefs and what they offer and what this witness
25 believes and what his wife believes.

1 THE COURT: I didn't hear an objection on
2 that. I do have 610 concerns at this point.

3 MS. DO: Your Honor, I think this is relevant.
4 I mean, we've spent -- I don't know how many weeks
5 we've been in trial now. The state has gone into
6 my client's beliefs and had insinuated that there
7 is something wrong with the fact that he's charged
8 participants, that he has no refund policy.

9 And I think it's a little ironic that the
10 Angel Valley has a contract where there is
11 no-refund policy and they charge for spiritual
12 services, where they charge for retreat programs
13 that are very similar to my client's. So I think
14 it's relevant to the state's offer.

15 That's basically it.

16 THE COURT: Okay. And we've gone into a whole
17 lot of testimony and evidence about what people
18 think and what might motivate them.

19 Sorting this out --

20 MS. POLK: The relevance to the state of mind
21 of the participants inside the sweat lodge where
22 people were killed. What this person -- what this
23 witness's belief and the other programs offered at
24 Angel Valley -- what does that have to do with
25 manslaughter charges?

1 THE COURT: I don't know offhand. I know
2 apparently they dealt directly with Angel Valley in
3 setting up, going there, and just a number of
4 things, and this is the environment they're in.

5 We've talked a little about what is the
6 environment, what programs did these people go
7 through, just a number of things. It's
8 all unusual.

9 MS. POLK: It's collateral attacks on the
10 beliefs of this witness.

11 THE COURT: That is the concern with 610. So
12 I'm going to be mindful of that.

13 The next thing is the document. There
14 hasn't been foundation. I sustained that.

15 MS. DO: Thank you.

16 (End of sidebar conference.)

17 Q. BY MS. DO: Mr. Hamilton, if you could
18 look at what's been marked as 587. You do
19 recognize this as a document from one of your
20 entities; correct?

21 A. Correct.

22 Q. It's something that Angel Valley
23 Spiritual Retreat Center, with whatever help you
24 got, drafted; correct?

25 A. Correct.

1 Q. And it's a document that is entitled
2 "Group Retreat Terms and Conditions, effective
3 August 1, 2009"; correct?

4 A. Correct.

5 Q. And it's five pages. And it lays out
6 various terms and conditions related to groups
7 bringing their retreats to your center; correct?

8 A. Correct.

9 Q. And this is a general document, meaning
10 these terms and conditions apply to any group that
11 comes to Angel Valley; correct?

12 A. **It lets them know where we are coming**
13 **from to begin with. But any of these can be**
14 **discussed, looked at, and explored. So it's not --**
15 **only when a signature goes on the back with**
16 **whatever we checked does it become the official**
17 **what we're doing with people.**

18 Q. I understand that. But I'm interested in
19 what the terms and conditions are that you set out
20 for the various groups that come to your center for
21 retreats. Okay?

22 What I'm asking is, are the terms and
23 conditions in this document terms and conditions
24 that you would expect any group to abide by --

25 A. Yes.

1 Q. -- subject to whatever negotiation you
2 might enter into?

3 A. Yes.

4 Q. Okay. So these are terms and conditions
5 that were effective as of August 1, 2009; correct?

6 A. Correct.

7 Q. So any group that came into Angel Valley
8 after August 1, 2009, you would expect that they
9 would abide by these terms and conditions; correct?

10 A. **Any new contract I would create after**
11 **August 1, 2009, yes. It would contain these terms**
12 **and conditions.**

13 Q. Okay. Now, this -- this, as you had told
14 the jury, is not an actual contract; correct?

15 A. Correct.

16 Q. It's a document that lays out the terms
17 and conditions of group retreats at Angel Valley;
18 correct?

19 A. **Of what we ask of them. Correct.**

20 Q. Correct. So this wouldn't just apply to
21 James Ray International when they came in
22 October 3rd through the 8th of 2009; correct?

23 A. **It did not apply to James Ray**
24 **International.**

25 Q. It did not apply to them?

1 A. No.

2 Q. Why didn't it apply to them?

3 A. **These were done after the contract was**
4 **signed in January of 2008 with James Ray. And**
5 **there were no -- the terms and conditions were all**
6 **contained within the contract.**

7 Q. You would agree that this is a true and
8 authentic copy of your document; correct?

9 A. Correct.

10 Q. You don't see anything doctored or
11 falsified about it? It's your document; correct?

12 A. **Close as I can get to it, yes.**

13 Q. Okay. Now, is there a draft before
14 August 1, 2009?

15 Did you have a document for terms and
16 conditions that applied to group retreats before
17 August 1, 2009?

18 A. **Yes. We did.**

19 Q. Okay. And did that draft differ from the
20 one that we're looking at, 587?

21 A. **I would say it did.**

22 Q. Did you -- did you provide a copy of the
23 draft before August 1, 2009, to anyone?

24 A. **Yes. Whoever --**

25 Q. What I mean -- I'm sorry. Let me

1 rephrase that question.

2 **A. Yeah.**

3 **Q.** It was poorly worded.

4 Did you give anyone in this case, either
5 the state or the defense, a copy of the terms and
6 conditions that applied before August 1, 2009?

7 **A. I don't remember.**

8 **Q.** Okay. Now, let me ask you, then, some
9 general questions.

10 At this time, Your Honor, I again move
11 for the admission of 587.

12 MS. POLK: Objection. Foundation.

13 THE COURT: Sustained.

14 **Q.** BY MS. DO: Let me ask you, then, for
15 some specifics about the terms and conditions that
16 you might generally apply to any group retreat.
17 Okay?

18 **A. Okay.**

19 **Q.** Did you have a minimum of a three-night
20 stay required?

21 **A. Yes. That was the requested.**

22 **Q.** Okay. And that applied before
23 August 1, 2009, as well as after; correct?

24 **A. No. Before we started out with a one
25 night over the years and then a two night and then**

1 **a three night. So you're talking a long span of
2 time.**

3 **Q.** All right. Did you charge for the
4 meeting facilities?

5 **A. No.**

6 **Q.** You didn't charge for the meeting
7 facilities?

8 **A. They were all included within the -- the
9 nightly rate.**

10 **Q.** Okay. Did you have a contract that
11 specified that meeting facilities like the Crystal
12 Hall would be charged \$700 per day?

13 **A. If somebody only wanted to rent that,
14 yes.**

15 **Q.** Did you also have terms and conditions
16 for all group retreats, not specific to JRI, that
17 you would provide vegetarian meals?

18 **A. Yes.**

19 **Q.** And you, as Angel Valley, would determine
20 the menu and the meal times; correct?

21 **A. No.**

22 **Q.** You determined the menu; correct?

23 **A. No.**

24 **Q.** Who determines the menu, Mr. Hamilton?

25 **A. The facilitator.**

1 **Q.** And that would be?

2 **A. JRI or whoever the group facilitator is.**

3 **Q.** Are you telling this jury that, for

4 example, when JRI came to Angel Valley for the
5 retreat in October of '09, it was told you -- or
6 somebody on behalf of JRI would tell you -- you
7 know -- have vegetarian casserole this day and
8 have -- I'm not a vegetarian, so I don't know all
9 the different -- but is that what you're saying?

10 That every day --

11 **A. There was communication between our chef
12 and the JRI staff on what they wanted to eat.**

13 **Q.** Okay.

14 **A. James Ray was very specific on what he
15 wanted for his people.**

16 **Q.** Within your vegetarian diet; correct?

17 **A. In that year, yes. Prior years there was
18 fish or chicken that he may have -- you know -- for
19 himself.**

20 **Q.** Okay. But what I'm trying to understand
21 is the vegetarian diet is not something that is
22 specific to JRI. It's something that Angel
23 Valley --

24 **A. We promote vegetarian meals.**

25 **Q.** Correct. Okay.

1 And my understanding also is that you had
2 sweat lodges that you provided to any group
3 retreat, not specific to JRI. Correct?

4 **A. Yes.**

5 **Q.** And so you would provide and
6 accommodate -- if a group retreat wanted a sweat
7 lodge, you would provide the structure; correct?

8 **A. Correct.**

9 **Q.** And if that was part of the group
10 retreat, the price of the sweat lodge structure is
11 negotiated in the group price; correct?

12 **A. Correct.**

13 **Q.** And if they wanted to just use a
14 specific -- I'm sorry. If they just wanted to use
15 the sweat lodge and not come for a three- or
16 five-day retreat, you would charge for the sweat
17 lodge; correct?

18 **A. No. We would not do that.**

19 **Q.** Okay. You've never had in any document
20 indicated that you charge 900 to \$1,300 for up to
21 75 people?

22 **A. Not to my knowledge. I don't remember
23 any document like that.**

24 **Q.** Let's take a look back at 587. Let me
25 ask you if that will refresh your memory.

1 A. Oh.
 2 Q. You want to take a look at --
 3 A. I -- I was mistaken. There it is.
 4 Q. Right. At the top of page 3?
 5 A. Yes.
 6 Q. You have, in fact, advertised sweat
 7 lodges and charged 900 to \$1,300 for up to 75
 8 people; correct?
 9 A. Based on this, yes.
 10 Q. Okay. And well, I mean, you don't have
 11 any reason to dispute with your own document;
 12 right?
 13 A. No.
 14 Q. Okay. So up to 75 people is the maximum
 15 that you have in your document, and that's not
 16 specific to JRI; correct?
 17 A. The sweat lodge was built to accommodate
 18 75 people. And JRI was the only one that ever got
 19 to 75 people.
 20 Q. You're saying that James Ray
 21 International brought a group of 75 to a sweat
 22 lodge ceremony?
 23 A. I want to say in the year 2008 it was
 24 very close to that.
 25 Q. Okay. My question is this, Mr. Hamilton:

1 This document that we're talking about that
 2 refreshed your memory, you now know that you do
 3 advertise sweat lodge ceremonies where you charge
 4 900 to \$1,300 for up to 75 people; correct?
 5 A. Yes.
 6 Q. And that is a service that you offer and
 7 you charge to anyone who wants to come to Angel
 8 Valley; correct?
 9 A. Correct.
 10 Q. It's not specific to Mr. Ray; correct?
 11 A. Correct.
 12 Q. It's not specific to James Ray
 13 International; correct?
 14 A. Correct.
 15 Q. And so you advertise the maximum capacity
 16 of 75 people; correct?
 17 A. Correct.
 18 Q. And you told this jury yesterday under
 19 direct examination that you weren't comfortable
 20 with a sweat lodge of 75. Do you remember that?
 21 A. I do.
 22 Q. But the document that you refreshed your
 23 memory with is a document that you still use to
 24 this day; correct?
 25 A. No.

1 Q. It's been abandoned?
 2 A. Been abandoned.
 3 Q. Okay. But for some time you had a
 4 document you advertise for up to 75 people after
 5 you negotiated the contract for JRI in January
 6 of 2008; correct?
 7 A. After the contract was negotiated by Gary
 8 Palish, yes.
 9 Q. Okay. And, in fact, you have made
 10 statements previous to your testimony yesterday
 11 that having 75 people in a sweat lodge structure of
 12 yours was, basically, not a big deal; correct?
 13 A. I don't remember saying it wasn't a big
 14 deal.
 15 Q. Okay. Have you ever told anyone that 75
 16 people in a sweat lodge is not a concern because
 17 the person who designed it, David Singing Bear, has
 18 designed sweat lodges for over 100 people?
 19 A. After the fact, after the incident on
 20 October 8, we then -- my wife -- you want hearsay?
 21 Q. No. I want your knowledge. What I'm
 22 asking --
 23 A. I did not talk to -- I did not talk to
 24 David Singing Bear to find out how many people he
 25 could build a sweat lodge for.

1 Q. Okay. My question to you, Mr. Hamilton,
 2 have you ever made the statement that David --
 3 David Singing Bear has built sweat lodges for
 4 people up to -- I'm sorry. For over 100 people?
 5 A. I may have in repeating what my wife was
 6 told by David Singing Bear.
 7 Q. And that's fine. I'm asking you for your
 8 statement. Okay?
 9 A. I don't remember if I did or not.
 10 Q. All right. Ms. Polk referenced a lawsuit
 11 yesterday.
 12 A. Okay.
 13 Q. Do you remember that? And this is a
 14 lawsuit you filed against James Ray International;
 15 correct?
 16 A. Correct.
 17 Q. James Ray as an individual; correct?
 18 A. Correct.
 19 Q. Now, I understand that you're not a
 20 lawyer. You didn't draft the complaint. But
 21 before a lawsuit is filed, you and your wife would
 22 have to go to a lawyer's office; correct?
 23 A. Correct.
 24 Q. And you'd have to sit down with a lawyer
 25 and you'd have to talk to them about the facts as

1 you know them; correct?
 2 **A. Correct.**
 3 **Q.** And this lawyer is going to take the
 4 facts you give them and draft your complaint;
 5 correct? Your lawsuit?
 6 **A. Correct.**
 7 **Q.** And you're not going to have a lawsuit
 8 filed based upon inaccurate information; correct?
 9 **A. Correct.**
 10 **Q.** And so to the best of your ability, you
 11 want to make sure that that lawsuit reflects what
 12 you believe to be true; correct?
 13 **A. Correct.**
 14 **Q.** And in this case, when you filed that
 15 lawsuit against James Ray International and JRI,
 16 did you have a chance to review the document that
 17 was filed to reflect the facts accurately?
 18 **A. Yes, we -- yes, I did.**
 19 MS. DO: May I approach, Your Honor?
 20 THE COURT: Yes.
 21 **Q.** BY MS. DO: I'm going to approach you
 22 with a document that is entitled "Complaint, Angel
 23 Valley Ministries, et al., versus James Arthur Ray,
 24 James Ray International." It's been marked as
 25 Exhibit 884.

1 Would you please take a look at that and
 2 tell me if you recognize the document.
 3 **A. I do.**
 4 **Q.** And that is the lawsuit that you had your
 5 lawyer file; correct?
 6 **A. Correct.**
 7 **Q.** And that lawsuit is based upon the facts
 8 that you and Amayra Hamilton provided to the
 9 lawyer; correct?
 10 **A. In addition to the other lawsuit**
 11 **information. The same attorney did it.**
 12 **Q.** Okay.
 13 **A. So there was a lot more involved than**
 14 **just me and my wife sitting down and saying this is**
 15 **what's happening.**
 16 **Q.** With respect to the document in front of
 17 you, this complaint, this lawsuit, it's based upon
 18 facts you provided to the lawyer; correct?
 19 **A. In addition to other facts they got, yes.**
 20 **Q.** Now, I want you to take a look, if you
 21 will, at paragraph 12 and read that to yourself for
 22 just a moment.
 23 **A. Okay.**
 24 **Q.** Okay. Now, you previously said you
 25 couldn't recall whether or not you, in fact, made

1 the statement that David Singing Bear has built
 2 sweat lodges for over a hundred people.
 3 Do you remember that?
 4 **A. I do.**
 5 **Q.** Now, looking at your complaint,
 6 paragraph 12, there is a statement that you
 7 reviewed and you adopted as your lawsuit stating,
 8 David Singing Bear is an expert in building Native
 9 American sweat lodges in the American Indian
 10 tradition and has built some to accommodate over
 11 100 people and many smaller ones. Correct?
 12 **A. Correct.**
 13 **Q.** And in this case, October 8, 2009,
 14 Mr. Ray didn't bring 75 people. He brought well
 15 under that maximum of what you set, of about 56
 16 people; correct?
 17 **A. Approximately.**
 18 **Q.** Okay. The terms and conditions that you
 19 have set out for all group retreats also include a
 20 no-refund policy; correct?
 21 **A. No. It's not a no-refund policy. There**
 22 **is a different -- depends on the contract itself.**
 23 **Q.** At this time do you recall whether or not
 24 you, in fact, have a cancellation policy that
 25 states all payments are nonrefundable?

1 **A. I'd have to look at the actual contract**
 2 **that you're referring to.**
 3 **Q.** Would it refresh your memory?
 4 **A. Yes. Absolutely.**
 5 **Q.** Why don't you take a look at 587, page 4,
 6 under cancellation policy.
 7 **A. Okay.**
 8 **Q.** And does that help you remember that your
 9 entity has a cancel -- cancellation policy where
 10 you set out, quote, unquote, all payments are
 11 nonrefundable?
 12 **A. However, cancelled retreats can be**
 13 **rescheduled within a year. So it's not**
 14 **nonrefundable per se. Each contract is different.**
 15 **The idea when we give this is to let somebody know**
 16 **where we're coming from. We tell them only when**
 17 **you're a thousand percent sure you want to come do**
 18 **we enter into a contract.**
 19 **So does it say in here the first part of**
 20 **that statement, all payments are nonrefundable?**
 21 **Yes. It gets their attention. However, cancelled**
 22 **retreats can be rescheduled within a year. So**
 23 **we're not trying to get their money and not give**
 24 **them anything back.**
 25 **Q.** Okay. Why don't you read the rest of the

1 cancellation policy, and I'll ask you some more
2 questions.

3 **A. Want me to read it out loud?**

4 **Q.** Sure. If you'd like to.

5 **A. Sure.**

6 **Your payments up to that point minus a**
7 **25 percent --**

8 **Q.** If you could start, sir --

9 **A. Sorry.**

10 **Q.** That's all right. Paragraph 1, please.

11 **A. Okay. Cancellation policy. All payments**
12 **are nonrefundable. However, cancelled retreats can**
13 **be rescheduled within one year. At times people**
14 **get ill and we still -- back another time.**

15 **Q.** Go ahead and can read it rather than --

16 **A. No. 2. Your payments up to that point,**
17 **minus a 25 percent fee, will be applied to the new**
18 **scheduled retreat. Additional -- an additional**
19 **payment will be required prior to establishing a**
20 **new retreat date. Cancellation within 60 days of**
21 **the event are not eligible to be rescheduled.**

22 **So they lose their money.**

23 **Q.** And I'm not quarreling with you whether
24 or not this is right or wrong. I mean, as a
25 business, it's appropriate for you to set out a

1 cancellation policy; correct?

2 **A. Correct.**

3 **Q.** Nothing wrong with that; right?

4 **A. Correct.**

5 **Q.** I'm going to show you what's been
6 admitted as 885 yesterday. It is the specific
7 contract with James Ray International that you've
8 indicated was negotiated by Gary Palish on behalf
9 of Angel Valley.

10 **A. Okay.**

11 **Q.** Could you read that last paragraph for
12 me.

13 **A. The terms and conditions of this contract**
14 **are valid until February 15th of 2008. Payments**
15 **are nonrefundable and nontransferable.**

16 **Q.** Okay. And, again, nothing wrong with you
17 as a business. I mean, it may be good business for
18 you to have a nonrefundable policy; correct?

19 **A. Okay.**

20 **Q.** Is that -- is that -- would you agree
21 with that?

22 **A. I do.**

23 **Q.** Okay. Now, you also require anyone who
24 comes to Angel Valley to sign waivers and releases
25 of liabilities; correct?

1 **A. I do.**

2 **Q.** And yesterday you explained to this jury
3 that those waivers were simply Angel Valley, quote,
4 unquote, asking people to take responsibility for
5 their own creation.

6 **A. Correct.**

7 **Q.** It does more than ask people to take
8 responsibility for their own creation. Right,
9 Mr. Hamilton?

10 **A. I'm sorry?**

11 **Q.** These waivers that you have people sign
12 do more than have people take responsibility for
13 their own creation; correct?

14 Do you understand what --

15 **A. Is there other language in it? Yes,**
16 **there is.**

17 **Q.** These waivers release you from legal
18 liability, do they not?

19 **A. I'm not sure about that.**

20 **Q.** You don't know?

21 MS. POLK: Your Honor, these questions call
22 for a legal conclusion.

23 THE COURT: Ladies and gentlemen, we are going
24 to go ahead and take the morning recess at this
25 time. Please remember the admonition.

1 And, Mr. Hamilton, you will be excused,
2 as well at this time.

3 Please be reassembled at 15 till, about
4 15 minutes. We'll start as soon as we can after
5 that.

6 I'm going to ask the parties to remain in
7 court here for a moment.

8 Thank you.

9 (Proceedings continued outside presence
10 of jury.)

11 THE COURT: I wanted to address a couple of
12 things. The bench conference -- and I was having a
13 concern with 610.

14 In thinking about the testimony, there
15 was testimony at one point where a witness -- I
16 believe was Fawn Foster -- talked about not
17 charging for spiritual things. That -- that came
18 out. So that's -- that's part of what's -- what's
19 going on here, part of the overall evidence.

20 Ms. Polk, I went back to your objection
21 that you had mentioned. You said you objected to
22 something about the charging. The question Ms. Do
23 had presented was, I want to talk a little bit
24 about some of the services that your group of
25 practitioners offer. You offer something called --

1 and coaching. I have it in my notes.

2 And you -- that's when you objected. You
3 said, objection to the relevance of this line of
4 questioning. And I overruled that -- that -- that
5 general objection. So that -- that's the record
6 that I see. If there's others, you can check with
7 your screens and -- and address that.

8 Then the last matter came up -- I really
9 want to minimize bench conferences. The last --
10 the objection to the last question. His belief as
11 to something can be important whether or not that
12 has any real legal effect. Ms. Polk, you objected
13 because it called for a legal conclusion.

14 And so technically that would be an --
15 the issue would be sustained. He can't make that
16 legal conclusion. Perhaps his belief has some
17 relevance. But that objection is sustained.

18 Thank you.

19 MS. DO: Your Honor.

20 THE COURT: Ms. Do.

21 MS. DO: I do. I know that I moved for the
22 admission of 587 twice, and Ms. Polk objected, I
23 believe, on -- was it relevance and foundation. I
24 believe that there is sufficient foundation. I'd
25 ask the Court to review that document and -- so

1 that I can renew my motion to admit it.

2 THE COURT: I will review that. But let's --
3 at the time I sustained it, the indication was this
4 didn't apply to JRI. So -- and you're saying it
5 does?

6 MS. DO: I think that the terms and
7 conditions, Your Honor, that are set out by
8 inference and connecting it up to the specific
9 contract signed by JRI does show that these terms
10 and conditions apply.

11 The witness further supplied testimony
12 stating that many of these terms and conditions did
13 apply prior to August 2009. For example, the
14 vegetarian meals, the cancellation policy, the
15 sweat lodge. So I think that any objection
16 Ms. Polk has goes to the weight and not to the
17 admissibility.

18 THE COURT: Then if there is direct foundation
19 offered and you reoffer it and it applies to JRI,
20 I'm not clear on that at this point.

21 Ms. Polk, anything else on that?

22 MS. POLK: Your Honor, just that the attempt
23 to lay the foundation, it was clear that this
24 witness established that James Ray International --
25 that the contract between Angel Valley and James

1 Ray International was entered. It would appear to
2 be perhaps 18 months prior to the effective date of
3 these terms and conditions.

4 And this witness made it clear that at
5 the time that the contract was entered into between
6 Angel Valley and JRI that it did not incorporate
7 these terms and conditions.

8 So clearly no foundation has been laid.
9 And, second, that it's just not relevant.

10 THE COURT: That's my understanding as it --
11 as it stands now.

12 But, Ms. Do, if -- if there's an
13 indication that, in fact, some of these provisions
14 apply and you can show that, then it may be
15 admissible at least in part. But I -- I don't have
16 that now.

17 MS. DO: I can revisit that. I -- I thought I
18 did lay the foundation. But I can revisit that.

19 But there's another purpose for which
20 this document is not only relevant but admissible,
21 Your Honor. This witness on the stand yesterday on
22 direct examination had testified that the reason
23 why they built the sweat lodge structure for 75 was
24 because JRI requested it. Then he offered
25 testimony that he was uncomfortable doing that

1 because the inference is that it was dangerous.

2 This document demonstrates
3 August 1, 2009, some months before JRI's sweat
4 lodge ceremony, he was advertising sweat lodge
5 structures for 900 to \$1,300 for use for up to 75
6 people. And I think that that's relevant to rebut
7 the inference that he was, in fact, uncomfortable
8 with the request because he's continuing to offer
9 sweat lodge for that maximum capacity to nonJRI
10 group retreats.

11 THE COURT: And you've been cross-examining on
12 that quite extensively. So -- and you've -- you've
13 done that. You've made that point.

14 MS. DO: And I understand that. But I'm --
15 what I'm arguing is that the document, which is
16 best evidence of that term and condition, is
17 relevant and admissible on that point.

18 THE COURT: I want to see the document --

19 MS. DO: Thank you.

20 THE COURT: -- for one thing.

21 And we will be in recess now.

22 Thank you.

23 (Recess.)

24 THE COURT: The record will show the presence
25 of Mr. Ray and the attorneys. The jury is not

1 present.

2 Ms. Do, I looked through the group
3 retreat terms and conditions effective
4 August 1st, 2009. And your -- your reason for
5 admissibility -- your request for admissibility and
6 the relevance?

7 MS. DO: Well, Your Honor, I think the
8 foundation in terms of authenticity of the document
9 has been laid. The witness adopted this. This is
10 his document. Some of the terms and conditions
11 he's already testify did, in fact, apply to JRI. I
12 think Ms. Polk's objection goes to the weight and
13 not the admissibility.

14 The relevance is twofold. One is that it
15 does set out terms and conditions that applied to
16 the James Ray International Spiritual Warrior
17 Retreat in October of 2009. And, secondly, it does
18 rebut the inference that the -- the direct
19 examination testimony through yesterday
20 regarding -- that Mr. Ray and James Ray
21 International only that prompted this witness to
22 construct a sweat lodge for up to 75.

23 The fact that he continually advertised a
24 sweat lodge for up to 75 people from August 2009,
25 at least through some date, including the

1 October 2009 Spiritual Warrior Retreat, is relevant
2 to rebut that inference.

3 And as the Court has heard, he also made
4 contrary statements in his lawsuit. And I think
5 that this goes to the credibility of his direct
6 examination testimony that 75 is dangerous and 75
7 was only done at the request of JRI.

8 THE COURT: And Ms. Polk, your objection?

9 MS. POLK: Your Honor, this witness has
10 established that these terms and conditions were
11 not part of the contract with JRI at the time of
12 the incident in question in 2009.

13 I did not have a copy of this document
14 before -- Heidi has made one for me. And I see
15 that this document has a place on every page for
16 the facilitator to initial, to sign and accept, and
17 that the last page includes a signature line both
18 for the facilitator and for Michael Hamilton.

19 So clearly this witness -- this document
20 was not in effect, did not apply -- this witness
21 has testified that this document did not apply for
22 Mr. Ray's event because the contract had been
23 entered into in January of 2008, some 16 months
24 before this document was -- even took effect.

25 Ms. Do has questioned the witness about

1 what terms and conditions do apply. She doesn't
2 need a hearsay document to establish what terms and
3 conditions applied at the time of the event
4 in 2009. That's a fair line of inquiry.

5 But to use some extraneous document that
6 contains much more than just the terms and
7 conditions is -- and that has a lot of information
8 that simply is irrelevant and does not apply to the
9 event in 2009.

10 And then, finally, Your Honor, the
11 paragraph from the lawsuit that Ms. Do did question
12 the witness about, she questioned him about
13 paragraph 12 from the lawsuit. And that
14 specifically states -- and I don't believe this
15 part was read to the jury. But in September
16 of 2008 Angel Valley's general manager, Gary
17 Palish, contracted with David Singing Bear, a
18 full-blooded Native American, to design and oversee
19 the construction of a sweat lodge to accommodate 75
20 people as per defendant's instruction.

21 And pursuant to Rule 106, I'll be
22 questioning the witness about the remainder of that
23 sentence that was not brought out in front of jury.

24 But the suggestion somehow that the
25 witness's testimony has been inaccurate, this

1 lawsuit is completely consistent -- that statement
2 of the lawsuit is completely consistent with this
3 witness's testimony, which is that it was because
4 of Mr. Ray that they constructed a larger sweat
5 lodge.

6 But what this terms and conditions
7 document, that was clearly not in effect for
8 Mr. Ray's event, has to do with this issue is
9 simply unclear. It's collateral and it's confusing
10 to the jury.

11 THE COURT: Ms. Do, other than the top of
12 page 2, where are other references to sweat lodges?

13 MS. DO: That is the one reference, Your
14 Honor. I --

15 THE COURT: Okay.

16 MS. DO: I'm reminded actually now that
17 yesterday during the direct examination Ms. Polk
18 offered two pamphlets from Angel Valley Retreat --
19 Spiritual Retreat Center that went into many of
20 these various items -- the vortex experience, the
21 various Crystal Hall, Heart Pavilion, the facility.

22 And I think this document is relevant for
23 a third purpose, which is to shed light on what was
24 gone into under direct examination.

25 And as the Court earlier stated, there

1 has been testimony received in the case regarding
2 opinions about whether or not spiritual services
3 should be charged. And this document lays out the
4 charges that were set out for the various spiritual
5 services that Mr. Hamilton and Mrs. Hamilton
6 offered.

7 THE COURT: There can be cross-examination.
8 There's not foundation for this exhibit to be
9 admitted. And that's the ruling.

10 Thank you.

11 (Recess.)

12 (Proceedings continued in the presence of
13 jury.)

14 THE COURT: The record will show the presence
15 of the defendant, Mr. Ray; the attorneys, and the
16 jury.

17 Mr. Hamilton has returned to the witness
18 stand.

19 Ms. Do.

20 MS. DO: Thank you.

21 Q. Mr. Hamilton, before we took that break
22 we were talking about waivers. Do you recall that?

23 A. Yes.

24 Q. And you, on behalf of Angel Valley
25 Ministries and Angel Valley Spiritual Retreat

1 Center, would have visitors and participants sign
2 waivers; correct?

3 A. Correct.

4 Q. And that was required of anyone who
5 wanted to participate in the services and
6 facilities that you offered; correct?

7 A. Correct.

8 Q. Required of anyone who came in as part of
9 a private group retreat; correct?

10 A. Correct.

11 Q. You told this jury yesterday the reason
12 why you have those waivers is because you were
13 asking people to take responsibility for their own
14 creation; is that correct?

15 A. Correct.

16 Q. Can you explain that a bit more. What do
17 you mean by that?

18 A. When people come to Angel Valley, the
19 intent is to take them to a place other than where
20 society in general is at, where there's an
21 invitation for people to look at their own
22 creation, to look at their life, look at
23 relationships, look at accidents, look at
24 everything, and be able to come to a place where --
25 our focus has been for years personal integrity,

1 personal accountability, personal responsibility.

2 And that is the intent of the waiver.

3 Yes. There's language in there that says we cannot
4 be held accountable. But the inference is when
5 people come in to say be more of -- more of a
6 conscious awareness of what you're creating, what
7 you're experiencing. So that is the intent that we
8 have when we created it many years ago.

9 Q. And it's something that you require every
10 year of every participant who comes to Angel
11 Valley; correct?

12 A. Every person that comes to the land. If
13 they feel for any reason they're not willing to
14 take responsibility for what they create, then we
15 say, then this is not the place for you.

16 So then they -- we never had anybody
17 leave. They've all said, yes. We honor that. And
18 the people we get normally do take responsibility
19 and say, oh. Yeah. No problem. And they sign it.

20 Q. Okay. So they can't come onto Angel
21 Valley property unless they sign it; correct?

22 A. Correct.

23 Q. And when you --

24 A. They can come on. They just can't stay.

25 Q. Okay. Or participate in any of the

1 services; correct?

2 A. Correct.

3 Q. Or use any of your facilities?

4 A. Correct.

5 Q. All right. When you say "take
6 responsibility," what are you asking them to take
7 responsibility of specifically?

8 A. For their creation.

9 Q. What do you mean when you say "their
10 creation"?

11 A. If a person is walking along the creek
12 and the water has made a stone slippery and for
13 some reason they slip and fall into the water,
14 well, we want people to say, oh. It wasn't Angel
15 Valley that created the water on the rock. It was
16 their foot going on the rock and it was their
17 choice for some reason -- I don't know why -- but
18 it was their choice to experience what they
19 experienced, and to look at it from that
20 perspective.

21 The same thing. We have a book there
22 that's called "Animals Speak" by Ted Andrews.
23 Every animal that crosses your path -- we tell
24 people, read the book. Let it tell you what it's
25 really about. It's to bring people into a more

1 **conscious awareness of their own creation and their**
 2 **own journey through life as opposed to blaming**
 3 **someone else.**

4 **Q.** Okay. So back to the waivers. What
 5 you're asking them to take responsibility for, if I
 6 understand, if an injury occurs to somebody on
 7 Angel Valley, you're asking them to take
 8 responsibility; correct?

9 **A. I'm asking them to take responsibility**
 10 **for everything that happens at Angel Valley while**
 11 **they're there as it pertains to them.**

12 **Q.** Which includes an injury; correct?

13 **A. Includes bird, includes injury, includes**
 14 **whatever.**

15 **Q.** What was the first word? I didn't hear
 16 you.

17 **A. A bird, an animal, a totem animal. If**
 18 **they show up on their path, there's a reason. We**
 19 **have rattlesnakes out there. And we tell people,**
 20 **if you see a rattlesnake, there's a reason there.**

21 **Q.** These waivers, which are called "Waiver,
 22 Release of Liability and My Acceptance of
 23 Responsibility," that you ask everyone to sign is
 24 you having them take responsibility of any injuries
 25 that occur to their person while they're on your

1 land; correct?

2 **A. If I wanted it -- to limit it to**
 3 **injuries, I would have put injuries only. I have**
 4 **all things.**

5 **Q.** Okay. Why don't we take a look at it,
 6 Mr. Hamilton.

7 **A. Okay.**

8 **Q.** I'm going to hand you a stack.
 9 Mr. Hamilton, what do you understand this
 10 document you have people sign, this waiver and
 11 release of liability -- what do you understand that
 12 document to do if somebody got injured on your
 13 land? What is your understanding?

14 **A. The intent. The intent of the agreement,**
 15 **the waiver and the acceptance of my responsibility,**
 16 **is to bring people into a heightened awareness of**
 17 **their creations in their life in all aspects,**
 18 **injuries included.**

19 **Q.** Okay. And I understand from your
 20 testimony yesterday you -- you own other
 21 businesses; correct? You've been in the
 22 construction business, for example, since 1974;
 23 correct?

24 **A. Yes.**

25 **Q.** And you owned a construction company at

1 one time called "Holistic Builders"; correct?

2 **A. Correct.**

3 **Q.** So you're a businessman; right?

4 **A. It's part of what I am.**

5 **Q.** Okay. And so what you're asking people
 6 to do when you have them sign this document is to
 7 release liability, meaning if they're injured on
 8 your property, you're not responsibility. Isn't
 9 that true?

10 MS. POLK: Your Honor, this calls for a legal
 11 conclusion.

12 THE COURT: Overruled.

13 THE WITNESS: It's part true.

14 **Q.** BY MS. DO: It's the main thing --

15 **A. That's why the -- the main thing is**
 16 **waiver of liability and acceptance of my**
 17 **responsibility. That's why it's in the same**
 18 **heading. It's both. It's not either/or. It's**
 19 **both.**

20 **Q.** And let me hand you a stack of documents
 21 that have been marked as Exhibit 448 to 485 and
 22 another set that's marked 155, 182, 185, 207, 216,
 23 218, 221, 400, 405, and 409.

24 Would you please look through those
 25 documents and tell me if you recognize them.

1 **A. I do.**

2 **Q.** These are Angel Valley waiver and
 3 releases of liability that you had the participants
 4 in the October 2009 JRI Spiritual Warrior retreat
 5 sign; correct?

6 **A. Correct.**

7 **Q.** And those waivers, essentially, release
 8 you from liability should any injuries occur on
 9 Angel Valley; correct?

10 MS. POLK: Objection. Calls for a legal
 11 conclusion.

12 THE COURT: Sustained.

13 **Q.** BY MS. DO: Why did you have these people
 14 sign these documents?

15 **A. To accept responsibility for everything**
 16 **they created while they were on our property.**

17 **Q.** And to accept responsibility, in your
 18 mind, means that if they're injured, it's not your
 19 fault; correct?

20 **A. I'm saying for them to accept**
 21 **responsibility for their creations while at Angel**
 22 **Valley.**

23 **Q.** Which means that if they're injured,
 24 Mr. Hamilton, it is not your fault; correct?

25 Do you not understand the question?

1 **A. Focus for me has always been to bring the**
 2 **consciousness up of every single thing that**
 3 **happens. It's not about blaming. It's about what**
 4 **do we need to do with it. So I'm --**

5 **Q.** We're not talking about blame,
 6 Mr. Hamilton. I'm trying to explore with you and
 7 have you explain to this jury why you have people
 8 sign this document. Okay?

9 Taking any one of the ones that we have
 10 just talked about --

11 And, Your Honor, at this time I move for
 12 the admission of Exhibit 448 to 485.

13 THE COURT: Could you read it fairly slowly?

14 MS. DO: I will. Sorry about that.

15 It's Exhibits 448 through 485. Then it
 16 is also 155, 182, 185, 207, 216, 218, 221, 400,
 17 405, and 409, Your Honor.

18 THE COURT: Ms. Polk.

19 MS. POLK: Your Honor, the state has no
 20 objection accepting Ms. Do's avowal that they are
 21 executed or signed by participants in
 22 Mr. Ray's 2009 Spiritual Warrior seminar.

23 If that's what they are, the state has no
 24 objection.

25 THE COURT: Ms. Do.

1 MS. DO: Your Honor, these documents were
 2 produced to us by the state.

3 THE COURT: Can I see one of them, please?

4 MS. DO: Sure.

5 THE COURT: So, Ms. Polk, you're indicating
 6 you don't object to their admission, but there's a
 7 qualification you think that should apply?

8 MS. POLK: Your Honor, I was just handed a big
 9 thick set. And I just want to verify that they are
 10 signed by the participants for the Spiritual
 11 Warrior -- Spiritual Warrior seminar of 2009.

12 And if that's what they are, the state
 13 has no objection.

14 THE COURT: Ms. Do.

15 MS. DO: They are, Your Honor.

16 THE COURT: Okay. Then the -- the exhibits
 17 that were recited by Ms. Do are admitted.

18 (Exhibits 448 through 485, 155, 182, 185,
 19 207, 216, 218, 221, 400, 405 and 409 admitted.)

20 MS. DO: Thank you, Your Honor.

21 **Q.** Let's -- let's just take any one of those
 22 as an example. And I'll look at a form here as
 23 well.

24 You have at the bottom a place where the
 25 participant would sign and there would also be

1 personal identifying information taken --
 2 correct? -- such as address, phone number?

3 **A. Yes.**

4 **Q.** And the date of the retreat is October 3
 5 to 8, 2009; correct?

6 **A. The actual contract was October 1, two --**
 7 **I mean to 9.**

8 **Q.** I understand.

9 **A. The participants came on the 3rd.**

10 **Q.** Right. When we're looking at these
 11 documents right now, Mr. Hamilton.

12 **A. Yeah.**

13 **Q.** At the bottom of each of those documents,
 14 the date is October 3 to 8, 2009; correct?

15 **A. Yes.**

16 **Q.** And the very first paragraph of this
 17 waiver identifies the party to which this document
 18 would apply; correct?

19 **A. The very first part talks about what we**
 20 **believe based on our philosophy and mission.**

21 **Q.** I'm talking about the first paragraph
 22 below the line. Okay? Let me --

23 If I can approach?

24 That paragraph that I just identified to
 25 you, Mr. Hamilton, identifies the parties that are

1 hereinafter called "Angel Valley parties"; correct?

2 **A. Correct.**

3 **Q.** And Angel Valley parties would include
 4 Angel Valley Ministry; correct?

5 **A. Correct.**

6 **Q.** That's the nondenominational,
 7 not-for-profit church?

8 **A. Correct.**

9 **Q.** Angel Valley Spiritual Center; correct?

10 **A. Correct.**

11 **Q.** And any other person or entity having any
 12 ownership interest in the Angel Valley properties;
 13 correct?

14 **A. Correct.**

15 **Q.** So that would include you and
 16 Ms. Hamilton; correct?

17 **A. Correct.**

18 **Q.** Along with their employees, agents,
 19 officers, directors, staff, volunteers; correct?

20 **A. Correct.**

21 **Q.** And other parties including any
 22 unaffiliated event planner or organizer; correct?

23 **A. Correct.**

24 **Q.** Meaning this document, this waiver and
 25 release also, by its terms, would apply to anyone

1 who comes onto the land under an event; correct?
 2 **A. I'm assuming that's what it means.**
 3 **Q.** Okay.
 4 **A. It was drafted by our attorneys. So --**
 5 **Q.** That's fine.
 6 MS. POLK: And the state's objection to the
 7 question. Calls for a legal conclusion.
 8 THE COURT: Sustained.
 9 **Q.** BY MS. DO: Is that your understanding?
 10 **A. You want to rephrase it so I can be clear**
 11 **what I'm --**
 12 **Q.** Is it your --
 13 **A. -- agreeing to.**
 14 **Q.** Sure, Mr. Hamilton. Is it your
 15 understanding that other parties, including any
 16 unaffiliated event planners or organizers, would
 17 include, for example, James Ray International?
 18 **A. Honestly, I'm not sure what they mean by**
 19 **"including any unaffiliated event planner." I'm**
 20 **not sure where the legal term came. I don't know.**
 21 **Q.** All right. That's fine. The very first
 22 paragraph, No. 1, states, I agree to waive,
 23 release, indemnify and hold harmless and forever
 24 release and discharge each of the Angel Valley
 25 parties for any and all claims, demands, injuries,

1 damages, actions, or causes of actions, suits,
 2 obligations, debts, judgements, remedies, or
 3 liabilities of any nature, and so on. Correct?
 4 **A. That's what it says.**
 5 **Q.** The very first paragraph talks about
 6 injuries and not, as you talked about earlier,
 7 birds or animals appearing on a path; correct?
 8 **A. Correct.**
 9 **Q.** And you understand -- right? -- as the
 10 business -- as a businessman and a person who
 11 created these entities, that this releases you from
 12 liabilities? So if somebody wants to sue you for
 13 an injury that occurred on Angel Valley, this
 14 document should prohibit that; correct?
 15 **A. I should say that was an original**
 16 **thought.**
 17 **Q.** I'm sorry?
 18 **A. No. It does not prohibit anybody from**
 19 **suings us.**
 20 **Q.** Okay. But is that -- was that part of
 21 the intent behind this document is what I'm asking?
 22 **A. That's what the attorneys were going for,**
 23 **I'm guessing.**
 24 **Q.** But not you?
 25 **A. No.**

1 **Q.** Okay.
 2 **A. I'm saying the intent was based -- when**
 3 **we go to attorneys, they do what they need to do to**
 4 **put it in legalese that I don't fully understand.**
 5 **Q.** You say --
 6 **A. Although the intent was to bring people**
 7 **into an awareness of their creations. That's why**
 8 **the very first statement, based on our philosophy**
 9 **and mission. That's the first thing that we put**
 10 **in. And then the attorneys took it from there.**
 11 **Q.** Are you telling this jury, Mr. Hamilton,
 12 that you do not understand what this document --
 13 **A. No.**
 14 **Q.** Let me finish the question, please.
 15 Are you telling this jury that you do not
 16 understand the purpose behind this document in
 17 terms of releasing you from legal liability?
 18 **A. I know the intent of the document.**
 19 **Q.** I'm still not understanding your
 20 testimony.
 21 My question to you -- and if we can get,
 22 this we'll move on.
 23 **A. Okay.**
 24 **Q.** This document that you have every person
 25 sign in order to get onto Angel Valley and

1 participate in any activities is to release you and
 2 Ms. Hamilton and your business entities from any
 3 legal liability should an injury occur; correct?
 4 **A. I can't answer it exactly in a yes or no**
 5 **answer.**
 6 **Q.** You earlier said to this jury that you
 7 didn't really understand what it means to release
 8 liability.
 9 **A. No, I did not.**
 10 **Q.** You didn't? Okay.
 11 **A. No. I said one particular part. I'm not**
 12 **sure what that meant.**
 13 **Q.** Let me ask you this question: As
 14 Ms. Polk indicated yesterday, there are right now
 15 ten lawsuits or lawsuits by ten individuals pending
 16 against you, Mrs. Hamilton, and Angel Valley
 17 Ministries and Angel Valley Spiritual Retreat
 18 Center; correct?
 19 **A. Correct.**
 20 **Q.** And did you at one point write to the
 21 participants and ask them to release you from
 22 liability in those lawsuits in exchange to
 23 participate in a ceremony at Angel Valley?
 24 **A. No, I did not.**
 25 **Q.** You didn't?

1 **A. I did not.**

2 **Q.** Okay. So if there is a letter written by
3 you and Mrs. Hamilton to that effect, are you
4 claiming that --

5 **A. What I'd like to see is the letter --**

6 **Q.** Okay. Let me pull it out for --

7 **A. -- where it brings it into context of**
8 **what we were asking.**

9 **Q.** Well, let me ask you the question. Did
10 you and Mrs. Hamilton write to the participants who
11 were there on October 8, 2009?

12 **A. Yes.**

13 **Q.** Did you write to the participants on
14 October 8, 2009, requesting their participation in
15 what you called a "healing" or a -- a "healing
16 ceremony"?

17 **A. Yes. I asked if they were interested in**
18 **doing that.**

19 **Q.** And did you ask them, in exchange for a
20 full release, our insurance company will be
21 covering the cost of your new healing experience at
22 Angel Valley? Did you write that?

23 **A. Can I see the document?**

24 **Q.** Sure.

25 MS. POLK: Your Honor, the state would ask

1 that this document be marked as an exhibit. And
2 the state has no objection to its admission.

3 MS. DO: I have no objection to it being
4 marked as an exhibit, for the record; but there is
5 a lot of hearsay in here. So I'd ask to use it to
6 refresh this witness's memory.

7 THE COURT: Go ahead and have the matter --
8 have the document marked since it's being referred
9 to. It won't be admitted at this time.

10 MS. DO: Thank you.

11 THE COURT: 905.

12 MS. DO: Thank you, Your Honor.

13 MS. POLK: Ms. Do, may I see it with the
14 attachments?

15 **Q.** BY MS. DO: I'm going to approach you
16 with Exhibit 905 at your request.

17 First of all, taking a look at these two
18 pages, do you recognize the -- to be a three-page
19 letter that you dated June 17, 2010, from you and
20 Mrs. Hamilton?

21 **A. Yes.**

22 **Q.** Okay. And at the top it says, Dear
23 Spiritual Warrior and sweat lodge participants;
24 correct?

25 **A. Correct.**

1 **Q.** This letter is being written to all the
2 participants; correct?

3 **A. Correct.**

4 **Q.** Who have participated in the James Ray
5 2009 Spiritual Warrior retreat --

6 MS. POLK: Your Honor, if the document is not
7 going to be admitted into evidence, then it's
8 improper to be reading from it. Either it's to
9 refresh the witness's recollection or if it's going
10 to be read to the jury, it needs to be marked and
11 admitted.

12 THE COURT: I think you're talking about
13 extrinsic evidence. And the actual extrinsic
14 evidence cannot be admitted, but the statement can
15 be read and acknowledged.

16 Before any extrinsic evidence could be
17 admitted, of course, you would have an
18 opportunity to -- to examine this witness,
19 Ms. Polk.

20 MS. POLK: I understood she was showing it to
21 the witness to refresh his recollection.

22 THE COURT: Well, if that's the purpose
23 then -- at this time, then that can be done.

24 MS. DO: Thank you, Your Honor.

25 **Q.** Now, taking a look at this next

1 paragraph -- I'm sorry. This next page. That,
2 again, is also something written by you and
3 Mrs. Hamilton; correct?

4 **A. Correct.**

5 **Q.** And the last sentence that I want you to
6 refer to states, in exchange -- do you see the
7 sentence I'm referring to?

8 Let me ask you --

9 **A. Yes, I see that. But it's out of**
10 **context.**

11 **Q.** Well, let me ask you a few questions,
12 Mr. Hamilton. These letters that you and your wife
13 wrote to the participants, you drafted on your own;
14 correct?

15 **A. That's correct.**

16 **Q.** You didn't have a lawyer write it; right?

17 **A. No.**

18 **Q.** You wrote it?

19 **A. Correct.**

20 **Q.** And all I'm asking, because there was, I
21 believe, some testimony from you that you didn't
22 quite get the legal terms of the waiver you had
23 people sign. I'm asking you, did you write to the
24 participants this sentence? In exchange for a full
25 release. Did you write that?

1 **A. That sentence without the second**
2 **paragraph is out of context. May I read the second**
3 **paragraph?**

4 **Q.** We can get there. But I want you to
5 first just give me an answer.

6 Did you write to the --

7 **A. I wrote this agreement. Yes. I stand**
8 **behind this is what I wrote. In context, if I can**
9 **read --**

10 **Q.** Mr. Hamilton, please. My question for
11 the jury is, did you write to the participants, in
12 full release? Did you write those words, "in full
13 release"? It's a yes or no.

14 **A. Yes.**

15 **Q.** Now, explain to the jury what you meant
16 when you wrote, full release, to all the
17 participants?

18 **A. Our attorneys and our insurance**
19 **company -- we were attempting to negotiate a**
20 **settlement with our ten lawsuits. And we**
21 **approached our attorney. And there was, let's say,**
22 **from our perspective, what the attorneys wanted and**
23 **what the participants wanted we felt were two**
24 **different things -- from the people suing us.**
25 **So my wife and I drafted a letter. And**

1 **this letter states different things. The first**
2 **reason -- and it gives why we wrote the letter.**
3 **It's to create open and clear communication**
4 **directly with you. We attempted, if we could, to**
5 **remove the attorneys from the equation and talk**
6 **face to face, heart to heart. That's where --**
7 **every document we send out was based on a**
8 **heart-to-heart connection.**

9 **If I take one sentence, as Ms. Do is**
10 **referring to, it's out of context with the entire**
11 **letter. And I said the second reason is based upon**
12 **our attorneys and insurance companies need to have**
13 **you sign releases from all who were here.**

14 **We were asking the insurance company, can**
15 **part of the insurance proceeds go to help heal some**
16 **of the people that were here? And that was the**
17 **intent of every letter, was to create**
18 **heart-to-heart, face-to-face interactions with**
19 **these people.**

20 **Q.** Thank you, Mr. Hamilton.

21 You were also asking them to drop the
22 lawsuits, were you not?

23 **A. I was not asking them to drop the**
24 **lawsuit. I was asking them to interact one to one.**

25 **Q.** So you didn't --

1 **A. Face to face.**

2 **Q.** You didn't write to the participants and
3 ask for a full release, meaning either not sue us
4 or drop the lawsuits? Is that your testimony?

5 **A. If I can read the entire document, it**
6 **puts it in perspective.**

7 **Q.** I just ask you to answer the question.
8 Was it your intent when you wrote to these
9 participants, whether motivated by you or your
10 insurance company or your attorneys, Mr.

11 Hamilton -- when you wrote to these participants
12 and you asked them to sign a full release in
13 connection to the October 8, 2009, sweat lodge,
14 were you asking them not to sue you?

15 **A. I was asking them to take their**
16 **responsibility. We would take ours. We would meet**
17 **so there's -- I can't give you a yes or no answer**
18 **to that question. It's more broad than a yes or**
19 **no.**

20 **Q.** Did it include you asking them to not sue
21 you?

22 **A. They had already sued us.**

23 **Q.** Not all of them. The other ones that you
24 wrote to -- you wrote to more than ten
25 participants, didn't you?

1 **A. I wrote to every one.**

2 **Q.** Every one of them; right?

3 **A. Yeah.**

4 **Q.** Not every one of them has sued you;
5 correct?

6 **A. That's correct.**

7 **Q.** And so the ones that haven't sued you,
8 you were asking them to not sue you; right?

9 **A. There was a document I sent out that**
10 **said, if we did anything wrong, by all means let's**
11 **go to court. I wanted my day in court.**
12 **Unfortunately I have it today. Because I wanted to**
13 **get up in front of the witness. So I'm not trying**
14 **to avoid anything. I was trying to get interaction**
15 **and dialogue between the people that felt we did**
16 **something wrong.**

17 **Q.** Well, did you also write to these
18 participants, including the ones who have not sued
19 you, if you do not have any injuries or damages,
20 you do not intend to file a claim, and you are
21 willing to sign a full release of liability, please
22 let us know.

23 Did you write that?

24 **A. Absolutely.**

25 **Q.** Okay. And I'm asking you a very simple

1 question, Mr. Hamilton. I'm simply asking you,
 2 when you wrote to these participants and asked them
 3 for a full release, what you meant to include,
 4 among other things that you're talking about --
 5 what you meant to include was for them to drop
 6 their claim against you; correct?
 7 **A. I was asking for clarity. So I can't**
 8 **answer that. I was not asking them to drop the**
 9 **lawsuit by itself. I was saying -- in the letters**
 10 **I wrote, I said, you've got two years from the date**
 11 **of this incident to file a lawsuit. If you're**
 12 **going to, do it soon.**
 13 **I was attempting to negotiate a**
 14 **settlement between the insurance company and the**
 15 **participants that we could deal heart to heart, one**
 16 **on one. And I did it in my own way.**
 17 **Q.** All right. And these lawsuits by the ten
 18 people are still pending against you and your wife;
 19 correct?
 20 **A. They are.**
 21 **Q.** Now, let's move on. I'm going to ask you
 22 about the sweat lodge structures that were built on
 23 your land.
 24 The jury's already heard this morning
 25 that you were not physically present or personally

1 involved in the construction of any sweat lodge
 2 from 2005 to 2009; correct?
 3 **A. Correct.**
 4 **Q.** But being on the board and the creator of
 5 Angel Valley Ministries and the creator of Angel
 6 Valley Spiritual Retreat Center, you did hire
 7 people to do that for you; correct?
 8 **A. Correct.**
 9 **Q.** And for 2007 and 2008 you hired somebody
 10 named Gary Palish -- correct? -- as a general
 11 manager?
 12 **A. Yes.**
 13 **Q.** All right. Now, you told this jury
 14 yesterday with respect to the 2007 sweat lodge
 15 structure, that was built by somebody that you
 16 happened to run into at an In-N-Out; is that
 17 correct?
 18 **A. I was mistaken yesterday. That one was a**
 19 **2006 one. The 2007 were -- was constructed by**
 20 **people that we had working for us on the land under**
 21 **the supervision of a very knowledgeable sweat lodge**
 22 **operator, so to speak.**
 23 **Q.** Okay. And thank you for that
 24 clarification.
 25 So in 2006 the sweat lodge structure that

1 was built on your land was built by an individual
 2 you ran into -- that you knew that you ran into at
 3 an In-N-Out; is that correct?
 4 **A. A Native American from -- yeah. Correct.**
 5 **Q.** And what was that person's name?
 6 **A. I don't know.**
 7 **Q.** And how --
 8 **A. After I left yesterday, I was looking. I**
 9 **can't find it.**
 10 **Q.** And how -- how well did you know that
 11 person?
 12 **A. Just, basically, in passing. And I met**
 13 **him. And we got talking. And he said that's what**
 14 **he does. I just -- we just happened to need a**
 15 **person to build a lodge.**
 16 **Q.** And you to this day don't remember that
 17 person's name?
 18 **A. No. I'm -- I was looking for it last**
 19 **night, but I could not find it.**
 20 **Q.** And you knew him from in passing. And
 21 did you do anything -- since it's your land, did
 22 you do anything to check up on whether or not this
 23 person has built sweat lodge structures before?
 24 Do you understand my question?
 25 **A. Did I ask for credentials? No, I did**

1 **not.**
 2 **Q.** Okay. So you -- you didn't do anything,
 3 I take it, to verify whether or not this person
 4 has -- had had the experience to build a sweat
 5 lodge structure other than what he represented to
 6 you; is that correct?
 7 **A. Correct.**
 8 **Q.** And then he, in fact, was hired by you to
 9 construct that sweat lodge; is that right?
 10 **A. Correct.**
 11 **Q.** And you were not physically present, so
 12 you didn't oversee the construction; correct?
 13 **A. I did not.**
 14 **Q.** And so you just assumed that he knew what
 15 he was doing; is that right?
 16 **A. Yes.**
 17 **Q.** All right. Now, in 2007 the sweat lodge
 18 structure that was built then, you said you hired
 19 someone who then hired people; correct?
 20 **A. We had people on the land that were**
 21 **part -- we had an individual that we knew that**
 22 **understood how to build sweat lodges. We hired him**
 23 **as a consultant to direct the people that we had**
 24 **working for us at that time to actually physically**
 25 **build the lodge.**

1 Q. And who was that?
 2 A. **Who was?**
 3 Q. Who was the person?
 4 A. **That we hired to oversee it?**
 5 Q. Yes.
 6 A. **His name was Artie.**
 7 Q. Once again.
 8 A. **Artie, A-r-t-i-e.**
 9 Q. And his last --
 10 A. **His Native American name would be Artie**
 11 **Looking Glass, I believe. Yeah. But -- yeah.**
 12 **Artie is how I know him.**
 13 Q. Okay. And you said that he was already
 14 working on the land?
 15 A. **No.**
 16 Q. Okay.
 17 A. **He was just a person we knew that**
 18 **conducted sweat lodges of his own.**
 19 Q. Okay. And you hired him to do what?
 20 A. **To supervise and design the lodge.**
 21 Q. In 2007 --
 22 A. **Yes.**
 23 Q. -- correct?
 24 And then he, after you hired him, would
 25 hire people to actually --

1 A. **We had workmen on our land that were in**
 2 **construction that were helping him.**
 3 Q. Thank you. Who is that?
 4 A. **Ken was the first name. Ken Stoneman, I**
 5 **want to say, is his last name. I can get the name.**
 6 **It was Ken and one other -- one or two of the other**
 7 **workers that were there. And I don't have their**
 8 **names in my memory.**
 9 Q. So a couple of people, you think?
 10 A. **Yes.**
 11 Q. All right. And these folks were already
 12 people who were on your land as workers?
 13 A. **Correct.**
 14 Q. What did they primarily do?
 15 A. **Construction.**
 16 Q. And so it's your testimony that the sweat
 17 lodge structure that was used in all of 2007 was
 18 built under the supervision of Artie Looking Glass;
 19 correct?
 20 A. **To the best of my memory, yes.**
 21 Q. It wasn't Gary Palish?
 22 A. **Gary was not involved in the physical**
 23 **construction in 2007.**
 24 Q. I'm talking about the overseeing.
 25 A. **No.**

1 Q. Okay. So it wasn't Gary Palish who
 2 oversaw --
 3 A. **It was -- it was created sometime, I want**
 4 **to say, in the summer of 2007. My wife, Amayra,**
 5 **knows exactly who each year. I'm a little fuzzy on**
 6 **exactly who did what in each year. So Amayra is**
 7 **the expert on who did what when.**
 8 Q. Okay. So is it fair to say that you --
 9 you weren't very involved and you didn't stay very
 10 knowledgeable about who it was that was actually
 11 building and designing these sweat lodge structures
 12 on your land?
 13 A. **That's correct.**
 14 Q. And so in 2008 who did you hire?
 15 A. **I didn't hire anyone.**
 16 Q. When I say "you," I mean Angel Valley
 17 Ministries, Angel Valley Spiritual Retreat Center,
 18 the business entity.
 19 A. **Gary Palish knew David Singing Bear. And**
 20 **that's who hired David Singing Bear.**
 21 Q. Mr. Hamilton, who hired Gary Palish?
 22 A. **I hired Gary Palish to handle Angel**
 23 **Valley Spiritual Retreat Center. He was free to**
 24 **create what he wanted to in that entity.**
 25 Q. Who did he answer to?

1 A. **During that year not much of anyone.**
 2 **Himself.**
 3 Q. He was a general manager, and he didn't
 4 answer to the board?
 5 A. **We had an ongoing relationship, and he**
 6 **would keep us informed. But it was not as a -- as**
 7 **I've shared, I stepped back from the day-to-day --**
 8 **day-to-day operation. And Gary was the one that we**
 9 **trusted to run the retreat center.**
 10 Q. Okay. So, again, in 2008 is it fair to
 11 say that you did not -- you were not involved, and
 12 you did not have much knowledge about who was
 13 actually building the sweat lodge structure
 14 in 2008?
 15 A. **That's correct.**
 16 Q. In October of 2009 a sweat lodge
 17 structure was built for the purposes of JRI
 18 Spiritual Warrior Retreat Center; correct?
 19 A. **No.**
 20 Q. Well, let -- you're right. Let me
 21 clarify that.
 22 The frame was built in September of 2008;
 23 correct?
 24 A. **Correct.**
 25 Q. The actual materials and -- and tarps

1 were put over that frame in October 2009 in
2 preparation of the JRI event; correct?

3 **A. Correct.**

4 **Q.** Now, again, you were not physically
5 presents for that; correct?

6 **A. Correct.**

7 **Q.** And you hired folks to layer the
8 materials over the wooden frame; correct?

9 **A. Yes.**

10 **Q.** And that would be Ted and Debbie
11 Mercer --

12 **A. Yes.**

13 **Q.** -- correct?

14 And, to your knowledge, Ted and Debbie
15 Mercer had involvement in building sweat lodge
16 structures in the previous two years under the
17 supervision of Gary Palish; correct?

18 **A. Building the frame or covering it? What
19 are you referring to?**

20 **Q.** Let me ask you. Which one is it?

21 **A. They were involved in the covering of the
22 framework.**

23 **Q.** But not in building the frame?

24 **A. I'm not sure what they did. I know that
25 in 2008 -- as I said, I saw willow trees in the**

1 **back of their truck. That's all I know they
2 brought there. I don't know what -- I don't know.**

3 **Q.** Okay. So, again, you were the owner of
4 the land. You don't know who's doing what in terms
5 of building these sweat lodge structures; is that
6 correct?

7 **A. I do not know who built the sweat lodge
8 in 2008 until after the fact. Yes.**

9 **Q.** Okay. And the structure that was used in
10 the JRI event was built in September of 2008;
11 correct?

12 **A. Correct.**

13 **Q.** And you weren't personally involved and
14 you didn't know then, but you have now learned,
15 that it was somebody named David Singing Bear who
16 designed that; correct?

17 **A. Correct.**

18 **Q.** And so at the time that this structure
19 was being built on your land, you didn't know who
20 was designing it; correct?

21 **A. Correct.**

22 **Q.** You later learned after the
23 October 8, 2009, accident that it's David Singing
24 Bear; is that correct?

25 **A. Correct.**

1 **Q.** So you don't -- you have no way to tell
2 this jury what David Singing Bear's qualifications
3 are to design a sweat lodge structure; correct? I
4 mean, you didn't speak to him?

5 **A. Correct.**

6 **Q.** Okay. You've never had any conversation
7 with Mr. Singing Bear; correct?

8 **A. Correct.**

9 **Q.** And so you never got from him whether or
10 not he's built sweat lodge structures before;
11 correct?

12 **A. Correct.**

13 **Q.** Whether he knows where to put the --
14 the -- the pit; correct?

15 **A. Correct.**

16 **Q.** You didn't talk to him, so you weren't
17 able to determine whether he knew what site to
18 pick; correct? Where to put the sweat lodge, the
19 location?

20 **A. That was already determined.**

21 **Q.** Okay. By who?

22 **A. By us in 2005.**

23 **Q.** All right. So because you never spoke to
24 him, you wouldn't know whether or not Mr. Singing
25 Bear correctly determined the diameter, the height,

1 the width, location of the door, how much materials
2 to use for the covering, the placement of the rocks
3 around the circumstance of the sweat lodge
4 structure, the location of the pit? Any of those
5 design features Mr. Singing Bear determined all on
6 his own without your involvement or knowledge;
7 correct?

8 **A. Correct.**

9 **Q.** And you didn't do anything, I assume, to
10 oversee to make sure that these structures that are
11 being built on your land were being done correctly;
12 correct?

13 **A. When you're running a retreat center,
14 there is an aspect of trust. And I trusted Gary.
15 Gary trusted David Singing Bear. And I stand
16 behind my statement this morning. The lodge was
17 built as a sound lodge.**

18 **Q.** I understand that. My question is, you,
19 basically, delegated all this responsibility to
20 other folks; correct?

21 **A. I cannot do it all myself. Yes.**

22 **Q.** And I understand that. And so you have
23 no way of telling this jury whether or not a
24 structure is sound other than the fact that you
25 have an assumption and a belief; correct?

1 **A. My belief is -- yes.**
 2 **Q.** Okay. Now, with respect to the
 3 October 8, 2009, sweat lodge structure -- Gary
 4 Palish at that time is now gone; correct?
 5 **A. Correct.**
 6 **Q.** He went to another retreat center called
 7 the "Mago Retreat Center"; correct?
 8 **A. I only found that out in late**
 9 **summer 2009.**
 10 **Q.** And the Mago Retreat Center is somewhat
 11 of a competitor to you?
 12 **A. You could look at it as that.**
 13 **Q.** All right. So now Gary is gone, and you
 14 contract Ted and Debbie to prepare the sweat lodge;
 15 correct?
 16 **A. Correct.**
 17 **Q.** Who supervised them?
 18 **A. They did. I did not supervise them. No.**
 19 **Q.** Okay. So you didn't supervise them;
 20 correct?
 21 **A. Correct.**
 22 **Q.** And they -- they did it on their own; is
 23 that right?
 24 **A. Correct.**
 25 **Q.** You did, however, instruct them to get

1 the tarps and the blankets from the pump house;
 2 correct?
 3 **A. No, I did not. I said build the lodge --**
 4 **cover the lodge.**
 5 **Q.** Okay. So you just tell them to cover the
 6 lodge, and you assume that they're going to know
 7 what to do; correct?
 8 **A. I trust that they know what they do.**
 9 **Yes.**
 10 **Q.** Okay. And so, to your knowledge, they
 11 would have retrieved the tarps and materials from
 12 the pump house where you store them; correct?
 13 **A. Yes.**
 14 **Q.** So you wouldn't know and you didn't give
 15 them any instruction in terms of how to properly
 16 layer the structure; correct?
 17 **A. I did not.**
 18 **Q.** You assumed they knew what they were
 19 doing?
 20 **A. I did.**
 21 **Q.** The wood that was cut and piled up for
 22 the ceremony was cut up by a person named Rotillo?
 23 **A. Rotillo.**
 24 **Q.** Rotillo Vasquez; correct?
 25 **A. Yes.**

1 **Q.** Now, Rotillo has worked for you for how
 2 long?
 3 **A. Nine years.**
 4 **Q.** Does he still work for you?
 5 **A. Off and on, yes.**
 6 **Q.** So you're able to contact him if you
 7 needed something done at Angel Valley; correct?
 8 **A. Sometimes I can. Sometimes I can't.**
 9 **Q.** Meaning you have a phone number for him?
 10 **A. Sometimes it works. Sometimes it**
 11 **doesn't.**
 12 **Q.** Meaning you have a phone number for him;
 13 correct? Whether it works or not --
 14 **A. Yes. I do have a phone number.**
 15 **Q.** Thank you.
 16 **A. Yeah.**
 17 **Q.** Now, Mr. Hamilton, you instructed Rotillo
 18 as to what wood to cut; correct?
 19 **A. I did.**
 20 **Q.** And where to pile it; correct?
 21 **A. I did.**
 22 **Q.** Your kitchen would have prepared whatever
 23 went into the comfort station; correct?
 24 **A. Correct.**
 25 **Q.** The electrolyte water?

1 **A. Correct.**
 2 **Q.** The fruits?
 3 **A. Correct.**
 4 **Q.** The lemon water; correct?
 5 **A. Yes.**
 6 **Q.** Now, all of that was done under your
 7 direction and had nothing to do with JRI; correct?
 8 That was a poorly worded question.
 9 JRI was not involved in any of those
 10 features of putting up the structure in October
 11 of 2009; correct?
 12 **A. Correct.**
 13 **Q.** Nothing to do with the materials or
 14 tarps; correct?
 15 **A. Correct.**
 16 **Q.** Nothing to do with the food or the water?
 17 **A. Other than what he wanted in food and**
 18 **water.**
 19 **Q.** But the preparation?
 20 **A. No. That was ours.**
 21 **Q.** Or the rocks; correct?
 22 **A. Correct.**
 23 **Q.** Now, I want to talk to you about the wood
 24 for -- for a moment. You told this jury yesterday
 25 that you had been in the construction business

1 since '73 or '74?
 2 **A. Actually, '71 was the first house that I**
 3 **remodeled.**
 4 **Q.** Okay. And you owned a construction
 5 company; correct?
 6 **A. I did.**
 7 **Q.** Called "Holistic Builders."
 8 **A. Correct.**
 9 **Q.** You had it from 1999 to 2007; correct?
 10 **A. Correct.**
 11 **Q.** Did you run any aspects of that business
 12 from Angel Valley?
 13 **A. We did.**
 14 **Q.** Did you store the wood that you bought to
 15 build the log cabins on Angel Valley?
 16 **A. We did.**
 17 **Q.** All right. Now, you told Rotillo what
 18 wood to bring to the site to be used in the fire;
 19 correct?
 20 **A. Correct.**
 21 **Q.** And that wood was left over from
 22 construction of cabins that you started in 2004;
 23 correct?
 24 **A. It was remaining from lumber we bought in**
 25 **2004 that we used for pump houses. And only in**

1 **2007 did we build one cabin out of the wood.**
 2 **Q.** All right. Let me start this way: You
 3 bought the wood in 2004; correct?
 4 **A. Correct.**
 5 **Q.** It was delivered to your land in 2004?
 6 **A. Correct.**
 7 **Q.** You used it to build some cabins;
 8 correct?
 9 **A. One.**
 10 **Q.** One cabin. When was that done?
 11 **A. 2007.**
 12 **Q.** All right. Then you had all this wood
 13 left over that you told the jury yesterday was
 14 unusable; correct?
 15 **A. Could not be used easily because of the**
 16 **shrinkage and the cracking and the checking that**
 17 **was done on the lumber. Correct.**
 18 **Q.** And you bought two trailers full of --
 19 two trailers, I think you said?
 20 **A. Two trailer loads in 2004 of what they**
 21 **called then "random seconds," if you will. It's**
 22 **not the lumber they would use for their main**
 23 **cabins. It's where they have -- may have a little**
 24 **coloration in it or may have a split in it.**
 25 **So it was not what they would consider**

1 **their first logs. It was the seconds that they**
 2 **had. They gave me a good deal on the lumber, so I**
 3 **said, yeah. Let's see if we can use it. So we**
 4 **bought it.**
 5 **Q.** And you bought two trailer loads that was
 6 delivered to you in 2004; correct?
 7 **A. Correct.**
 8 **Q.** You used some of it to build one cabin?
 9 **A. Correct.**
 10 **Q.** And then the leftover you needed to use
 11 up in some way?
 12 **A. We used -- we built two pump houses and**
 13 **one cabin --**
 14 **Q.** All right.
 15 **A. -- from the lumber.**
 16 **Q.** And it's this wood that was delivered to
 17 your land in 2004 that you then instructed Rotillo
 18 to cut up to be used in the ceremony five years
 19 later in 2009; correct?
 20 **A. Correct.**
 21 **Q.** I'm going to show you some photographs
 22 that have already been admitted. Here's 493, 318,
 23 and 562.
 24 MS. POLK: May I have those numbers again?
 25 MS. DO: Yes. 493, 318, and 562.

1 **Q.** Let's take a look at 493, Mr. Hamilton.
 2 **A. Okay.**
 3 **Q.** Ms. Polk showed you yesterday -- showed
 4 you this photograph yesterday. And you identified
 5 the stack that's in the back as the D logs that you
 6 had Rotillo cut up to be used in the fire that
 7 heated the rocks for the October 8, 2009, sweat
 8 lodge; correct?
 9 **A. Yes. The random stack. Yes.**
 10 **Q.** And you told the jury -- and, again, this
 11 is leftover wood that you had sitting on your land
 12 for about five years; is that correct?
 13 **A. Yes.**
 14 **Q.** And how did you store it during those
 15 five years?
 16 **A. Similar to what was here. But it was in**
 17 **large -- we had it banded together over to the**
 18 **side, as I shared yesterday, 30 or 40 feet to the**
 19 **right, stored and covered for that whole period of**
 20 **time.**
 21 **Q.** With tarps; correct?
 22 **A. Yes.**
 23 **Q.** And you had told this jury yesterday that
 24 this wood came from a stack that was on the other
 25 side the sweat lodge?

1 **A. Well, to the right of where the stack is.**
 2 **Yes.**
 3 **Q.** Okay. So let's look at 318. You
 4 recognize that to be the comfort station that was
 5 set up for the October 8, 2009, sweat lodge;
 6 correct?
 7 **A. I do.**
 8 **Q.** And we know that because we see the
 9 sheriff's tape up; correct?
 10 **A. Correct.**
 11 **Q.** I'd like to focus your attention on this
 12 stack that's in the back here. Do you see all that
 13 wood that's in the back of the comfort station?
 14 **A. Yes.**
 15 **Q.** And there seems to be a lot; correct?
 16 **A. That's correct.**
 17 **Q.** And they're covered -- some of it is
 18 covered up with tarps; correct?
 19 **A. Correct. And some is not.**
 20 **Q.** Okay. And this is -- this is the source
 21 from which you had Rotillo cut up the D logs that
 22 were used in the ceremony; correct?
 23 **A. Correct.**
 24 **Q.** Let's take a look at another view. Going
 25 to 562 that I gave you, sir.

1 **A. Okay.**
 2 **Q.** Now, this photograph -- do you see
 3 yourself, first of all?
 4 **A. I do.**
 5 **Q.** That's you right there; correct?
 6 **A. It is.**
 7 **Q.** Okay. And you recognize this photo to be
 8 taken on Saturday, October 10, 2009, during what
 9 you call the "cleansing ceremony"; correct?
 10 **A. Correct.**
 11 **Q.** Now, in the background of this photograph
 12 we see the sweat lodge has been dismantled; right?
 13 The sweat lodge structure is not there anymore?
 14 **A. Correct.**
 15 **Q.** Okay. In the background of this
 16 photograph is another pile of wood. That's the
 17 pile of wood that we saw behind the comfort station
 18 in Exhibit 318; correct?
 19 **A. That's correct.**
 20 **Q.** And that's the source from which you had
 21 Rotillo cut up the D logs; correct?
 22 **A. Correct.**
 23 **Q.** Now, when you instructed Rotillo to do
 24 that, did you supervise him?
 25 **A. Yes.**

1 **Q.** You physically watched him do it?
 2 **A. I physically told him these are the logs**
 3 **I want cut.**
 4 **Q.** I understand that. But when he cut up
 5 the wood, were you --
 6 **A. Was I there through every log cut? No.**
 7 **Q.** Okay.
 8 **A. I was not.**
 9 **Q.** Did anyone help Rotillo?
 10 **A. No.**
 11 **Q.** And so he -- you assumed he did as you
 12 instructed and cut up the wood that you wanted him
 13 to cut up; correct?
 14 **A. Correct.**
 15 **Q.** And stacked it in that pile that we saw
 16 in Exhibit 493.
 17 **A. Correct.**
 18 **Q.** All right. Now, after the sweat lodge
 19 structure -- I'm sorry.
 20 After the accident of October 8, 2009,
 21 you removed all that wood; correct?
 22 **A. We cut it up and sold it as firewood.**
 23 **Q.** All right. So it's gone? It's not on
 24 the land anymore; correct?
 25 **A. It's gone.**

1 **Q.** When did you do that?
 2 **A. I would say beginning in November,**
 3 **December. As the -- as the cold came, I decided at**
 4 **that moment that it was time to clear up any of the**
 5 **lumber that was there.**
 6 **Q.** November, December of 2009; correct?
 7 **A. Correct.**
 8 **Q.** So it had been sitting there on Angel
 9 Valley for five years; correct?
 10 **A. Correct.**
 11 **Q.** And then you decided about a month,
 12 possibly two months, after the accident of
 13 October 8 that it was time to get rid of it;
 14 correct?
 15 **A. Yes.**
 16 **Q.** And your testimony is that you sold it
 17 all as firewood? All of that?
 18 **A. Basically, all of it. Yeah.**
 19 **Q.** Okay.
 20 **A. We still have a little bit there yet, but**
 21 **most of it was sold.**
 22 **Q.** Okay. You had talked to this jury
 23 yesterday about pressure-treated wood. Do you
 24 remember that?
 25 **A. I do.**

1 **Q.** And as a businessman in construction
 2 for -- you know -- a couple decades, you understand
 3 that you are to never burn pressure-treated wood;
 4 correct?
 5 **A. Correct.**
 6 **Q.** That's because it's very dangerous;
 7 correct?
 8 **A. Correct.**
 9 **Q.** It can be fatal; correct?
 10 **A. I do not know. I just know that we had a**
 11 **policy to never burn it.**
 12 **Q.** Okay.
 13 **A. Now, what it can do to people, I don't**
 14 **know.**
 15 **Q.** Did you ever do anything to try and
 16 educate yourself on why it is you don't burn
 17 pressure-treated wood?
 18 **A. No. I just decided not to do it.**
 19 **Q.** Okay. So you have no idea of whether or
 20 not a tablespoon -- let me back this up.
 21 Pressure-treated wood, you explained to
 22 the jury yesterday, is treated in two ways;
 23 correct?
 24 **A. Two that I'm aware of.**
 25 **Q.** All right. And the one that you -- the

1 two that you're aware of, the first one is
 2 injection; correct?
 3 **A. Correct. Yes.**
 4 **Q.** Of whatever compound is used to treat the
 5 wood; correct?
 6 **A. Correct.**
 7 **Q.** Do you know that compound to be a
 8 compound called "copper chromium arsenic"?
 9 **A. No, I do not.**
 10 **Q.** You've never heard of CCA?
 11 **A. I've heard of it, but I wasn't --**
 12 **Q.** Okay. As somebody who's been in
 13 construction, do you know whether or not
 14 pressure-treated wood is treated with a compound
 15 called "CCA"?
 16 **A. Did I go to the lumber yard and say I**
 17 **want a product that has CCA in it? No. I did not.**
 18 **I said, do you have pressure-treated lumber? And I**
 19 **would either get the -- the injected -- here in**
 20 **this area, they do not have much of the injected.**
 21 **It's more of the pressure --**
 22 **Q.** We'll talk about that. What I'm asking
 23 you, sir, since yesterday under direct examination
 24 it appeared to me that you knew quite a bit about
 25 wood because you've been in construction for nearly

1 three decades. Correct?
 2 **A. Okay.**
 3 **Q.** And what I'm asking you is, do you know
 4 whether or not pressure-treated wood is treated
 5 with a compound called "copper chromium arsenic,"
 6 or "CCA"?
 7 **A. I do not. I know it's dangerous, period.**
 8 **Q.** Okay. You described to the jury that you
 9 can recognize pressure-treated wood based upon two
 10 things; correct? One, if it's injected, there will
 11 be holes; is that correct?
 12 **A. Yes.**
 13 **Q.** Or sometimes dash marks; correct?
 14 **A. Correct.**
 15 **Q.** The other way that you can recognize
 16 pressure-treated wood is if it's been dipped;
 17 correct?
 18 **A. Well, it's not dipped. It's more or less**
 19 **put in a -- well, it's pressured. There's pressure**
 20 **in it because it doesn't always go to the center of**
 21 **the log. That's what I was able to buy here at**
 22 **Lumbermen's was the pressured -- pressured lumber.**
 23 **Q.** Okay. And that particular lumber that's
 24 treated, you know it's treated, pressure treated,
 25 because of the coloration is green; correct?

1 **A. More blue.**
 2 **Q.** More blue?
 3 **A. Yes. What I got at Lumbermen's was more**
 4 **of a bluish color than a green.**
 5 **Q.** Do you know whether that blue color comes
 6 from the copper chromium?
 7 **A. No, I do not.**
 8 **Q.** All right. You use pressure-treated wood
 9 at the base of anything that connects wood to
 10 concrete; correct?
 11 **A. Correct.**
 12 **Q.** You also use pressure-treated wood where
 13 you're going to have wood exposed to water;
 14 correct?
 15 **A. Correct.**
 16 **Q.** Like a bridge over a creek?
 17 **A. Correct.**
 18 **Q.** You're going to use pressure-treated wood
 19 to build fence posts because those are things that
 20 remain exposed to the elements for quite a long
 21 time; correct?
 22 **A. No.**
 23 **Q.** You don't use it for fence posts?
 24 **A. No, I do not.**
 25 **Q.** All right. Do you know if people do?

1 **A. I've heard of them. Yes.**
 2 **Q.** Okay. But you're saying you don't.
 3 **A. We did not.**
 4 **Q.** All right. Now, you told the jury that
 5 it's very toxic -- I believe your words were very,
 6 quote, unquote, very toxic if burned. Correct?
 7 **A. That was my understanding of -- yes. I**
 8 **did.**
 9 **Q.** So if you had an employee -- and I'm not
 10 suggesting this happened. I want to know what your
 11 understanding is.
 12 If you had an employee on Angel Valley
 13 property burn pressure-treated wood in an activity
 14 sponsored by your entities, that would be a real
 15 big problem for you; correct?
 16 **A. Yes. Because it wouldn't be something I**
 17 **would recommend nor would I -- I would forbid it if**
 18 **I knew anything about it. Yes.**
 19 **Q.** Right? It would be a big problem because
 20 it's a toxic thing to burn; correct?
 21 **A. Yes.**
 22 **Q.** And somebody could get really hurt;
 23 correct?
 24 **A. I don't know exactly what the effects**
 25 **would be if pressure-treated lumber was burned. I**

1 **just know I never did it.**
 2 **Q.** Okay. So if somebody on your land burned
 3 pressure-treated wood, that would be a very big
 4 problem for you as the owner of the land; correct?
 5 **A. I don't know. I'm not sure what you mean**
 6 **by "big problem." What does it -- what do you mean**
 7 **by that?**
 8 **Q.** Well, would it cause you concern, first
 9 of all?
 10 **A. It would definitely cause me concern why**
 11 **they did it to begin with. Everybody was told**
 12 **never to burn any pressure-treated lumber.**
 13 **Q.** Do you feel you're responsible for your
 14 employees?
 15 **A. Yes. I am.**
 16 **Q.** Do you feel you're responsible for what
 17 happens on your land?
 18 **A. I am.**
 19 **Q.** Okay. And -- and that's what I mean,
 20 sir. And I'm not implying that this did, in fact,
 21 happen. I want to understand what your belief is.
 22 Okay?
 23 If somebody burned the wrong wood on
 24 Angel Valley, that would cause you concern because
 25 it's your employee, your land; correct?

1 **A. Yes.**
 2 **Q.** Now, did you train your employees to
 3 recognize pressure-treated wood?
 4 **A. Yes.**
 5 **Q.** All of them; correct?
 6 **A. Yes. The people that worked there.**
 7 **Q.** The people that had anything to do with
 8 cutting up the wood or burning it; correct?
 9 **A. Correct.**
 10 **Q.** You trained them?
 11 **A. Yeah.**
 12 **Q.** You told them that --
 13 **A. Well, trained them. I told them. They**
 14 **know it. They were all construction people. And**
 15 **they all know what pressure-treated lumber is.**
 16 **Q.** Okay. So Rotillo, based upon your work
 17 relationship with him, would know what
 18 pressure-treated wood is?
 19 **A. Yes.**
 20 **Q.** And I don't know who else you had
 21 employed. But you employed Ted Mercer in October
 22 of 2009 to be the fire tender at the JRI sweat
 23 lodge ceremony; correct?
 24 **A. Correct.**
 25 **Q.** And so as a fire tender, it was his job

1 to take the wood and burn it; correct?
 2 **A. Yes.**
 3 **Q.** To heat the rocks; correct?
 4 **A. Correct.**
 5 **Q.** The rocks that went into the sweat lodge
 6 ceremony; correct?
 7 **A. Correct.**
 8 **Q.** And so will you tell the jury whether or
 9 not you trained Ted Mercer to recognize
 10 pressure-treated wood.
 11 **A. Ted Mercer was in construction and**
 12 **dabbling throughout his business. And he knew --**
 13 **we talked at one point, I believe. If you go back**
 14 **in time, he was there actually from 2007 on. He**
 15 **came originally as a volunteer and then went into**
 16 **actually being employed.**
 17 **And every person that we had I am sure I**
 18 **told them to never burn pressure-treated lumber.**
 19 **If any fires came up, I would have told everyone**
 20 **that.**
 21 **Q.** So you specifically talked to Ted Mercer,
 22 described to him what pressure-treated wood looked
 23 like -- correct? -- so he would recognize it?
 24 **A. To the best of my ability, yes. We had a**
 25 **discussion on what wood to use and what wood not to**

1 use.

2 Q. So would it surprise you that Ted Mercer
3 testified he doesn't know what pressure-treated
4 wood is?

5 A. **Surprise? Yeah. It would. Because I**
6 **would have -- you know -- just because I tell**
7 **someone something, I would assume that they would**
8 **have understood it and would follow it.**

9 Q. Because you have a lot of wood on your
10 land; correct?

11 A. **We have a lot of regular natural wood.**
12 **Yes.**

13 Q. And other wood; correct?

14 A. **Regular natural wood. Yes.**

15 Q. And pressure-treated wood?

16 A. **Small amount. Yes.**

17 Q. But you, in fact, had it on your land;
18 correct?

19 A. **Yes.**

20 Q. And so you, understanding that it's toxic
21 to burn, would have, as the owner of the land,
22 instructed and trained your employees to recognize
23 pressure-treated wood; correct?

24 A. **Yes.**

25 Q. And so if you had trained Ted Mercer, he

1 would know whether or not wood is pressure treated;
2 correct?

3 A. **I would have assumed he did. Yes.**

4 MS. DO: Your Honor, can we break at this
5 moment?

6 THE COURT: Yes. Thank you, Ms. Do.

7 Ladies and gentlemen, we will take the
8 noon recess now. Please remember the admonition.
9 And I think Ms. Rybar probably informed you we will
10 recess by 4:00 with the weekend coming up. 4:00
11 today at the latest. So please reassemble at 20
12 after. I'd like to get started before 1:30. No
13 later than 1:30.

14 And, Mr. Hamilton, you are excused at
15 this time as well.

16 We are in recess.

17 (Recess.)

18 THE COURT: The record will show the presence
19 of Mr. Ray, the attorneys, the jury. And the
20 witness, Mr. Hamilton, is on the witness stand.

21 Ms. Do, you may continue.

22 MS. DO: Thank you, Your Honor.

23 Q. Good afternoon, Mr. Hamilton.

24 A. **Hello.**

25 Q. Before we took our lunch recess, we were

1 talking about pressure-treated wood. Do you
2 remember that?

3 A. **I do.**

4 Q. I'm going to put up on the projector
5 there Exhibit 493, which this jury has already
6 seen. It's in evidence.

7 You testified yesterday when asked about
8 this pile of -- of wood that's in front of the
9 stack of the D logs that you do see some
10 coloration; correct?

11 A. **I do.**

12 Q. And the coloration that you see is either
13 a green or bluish hue; correct?

14 A. **No. What I'm saying is there is**
15 **different -- it's all different -- you know -- like**
16 **the -- the log to the left is a very dark. That**
17 **could look like a gray or a green. The log to the**
18 **right looks like a -- if you look to the log on the**
19 **left, that has a hue of gray, green. It's hard**
20 **to -- you know -- the hue other than the natural**
21 **wood color.**

22 Q. Thank you. Would you use the touchscreen
23 and show the jury where it is that you see the
24 green hue.

25 A. **This has a what I would consider a**

1 **weathered look from being out in the weather.**

2 Q. Okay. Where else do you see green or
3 blue?

4 A. **Here. Here. There.**

5 Q. Now, you would agree with me that these
6 are not the D logs that you referred to in your
7 testimony yesterday; correct?

8 A. **No.**

9 Q. These --

10 A. **I do not.**

11 Q. These are scrap lumber; correct?

12 A. **No. This is a D log right here.**

13 Q. All right. The one that you just
14 indicated?

15 A. **Yeah.**

16 Q. But the rest --

17 A. **Those are rafters that we would use in**
18 **the houses.**

19 Q. In the what?

20 A. **We had short -- in the log home you have**
21 **logs in the wall.**

22 Q. Yes.

23 A. **And then you have those type of timbers**
24 **that go the -- what you would call the "rafters" or**
25 **the "ceiling joists."**

1 Q. Okay.

2 A. **And that's what those are.**

3 Q. Now, you've indicated -- let's take out

4 the -- the D log. You've indicated three locations

5 where you see what you describe as either a green,

6 blue, or gray hue.

7 A. **It's a -- I will call it a weathering --**

8 Q. Oh. Weathering.

9 A. **-- is the best term for it.**

10 Q. Okay.

11 A. **Because it depends on the -- the wood,**

12 **depends on where it's weathered, it can show up as**

13 **a gray. It can show up as a -- just almost a**

14 **black. It can show up as a green. It can show up**

15 **as a -- just different shades of brown.**

16 Q. Okay. So looking at this stack or this

17 pile, Mr. Hamilton, the coloration that you're

18 describing as either green or blue, that's not due

19 to the fact that it's pressure treated?

20 A. **No. Not to my knowledge. No.**

21 Q. Okay.

22 A. **It does not -- I do not see any**

23 **pressure-treated lumber there.**

24 Q. Yesterday you told this jury that the

25 reason why it looks green is because it was

1 painted. Do you remember that?

2 A. **Yes.**

3 Q. And it was your testimony yesterday that

4 the green that they see on this lumber is painted

5 from --

6 A. **No. I said it could be.**

7 Q. Oh. It could be.

8 A. **Could -- we had green lumber on the side**

9 **of our bridge where you drive in. Those planks**

10 **broke and we may have stacked some of those planks**

11 **with that lumber. It's the lumber in the sides.**

12 Q. So was any of this wood left over from

13 use on the bridge? Is that your testimony?

14 A. **No. I -- I don't know. I do not have --**

15 **if I had it right here in my hand, I could give you**

16 **exactly what it was. But I'm looking at a picture**

17 **that is not the greatest picture. I'm not**

18 **100 percent sure.**

19 Q. Okay. And -- and that pile obviously

20 existed on October 8, 2009; correct?

21 A. **If that's when the photo was taken, yes.**

22 Q. All right. And it existed there when,

23 October 9, 2009, there still was sheriff's

24 perimeter tape up; correct?

25 A. **Correct.**

1 Q. And, to your knowledge, do you know

2 whether or not any that has been collected and held

3 in evidence?

4 A. **No, I do not.**

5 Q. Okay. So without that you're saying

6 there's no way for you to tell the jury whether or

7 not that wood is, in fact, treated or not; correct?

8 A. **I do not see any treated lumber in this**

9 **photograph.**

10 Q. Okay. Let me go back to your testimony

11 of yesterday.

12 When you pointed out some of the greenish

13 color that you saw -- I just want to make sure I'm

14 clear -- did you testify yesterday that it could be

15 because it was painted green?

16 A. **Yes.**

17 Q. And is that still your testimony today?

18 A. **It is.**

19 Q. And it could be painted green because it

20 was used -- or similar to wood that was used on the

21 bridge?

22 A. **On the railing of the bridge --**

23 Q. Yes.

24 A. **-- we used regular wood, unpressurized,**

25 **untreated wood. We then stained it green with a**

1 **stain color.**

2 Q. Okay. So do you have to go back to that

3 bridge periodically to replace the wood since it's

4 exposed to water and the elements --

5 A. **No.**

6 Q. -- and not treated?

7 A. **Only a flood.**

8 Q. Okay. Earlier you testified that you

9 would use pressure-treated wood when you have

10 something over water or near water, like a bridge

11 over a creek. Do you remember that?

12 A. **I never said a bridge over a creek. I**

13 **said when wood is near concrete where there's water**

14 **exposure all the time, yes. Then you would used**

15 **the pressurized lumber.**

16 Q. Okay. Then I must have misheard you. I

17 thought this morning and I asked if one occasion in

18 which you would use pressure-treated wood would be

19 if -- if exposed to water, like bridge over a

20 creek.

21 Do you remember that question?

22 A. **Yes.**

23 Q. And do you remember your answer to that

24 question?

25 A. **Yes, I do.**

1 Q. Do you remember saying yes?
 2 A. Yes.
 3 Q. Okay. Do you use pressure-treated wood
 4 on that bridge over the creek?
 5 A. **On the decking but not the side rail.**
 6 **And I was referring yesterday and today to the side**
 7 **rail. That side rail, if that's what that lumber**
 8 **is, is not pressure treated.**
 9 Q. Okay. Now, because this wood -- assuming
 10 it's never been collected, there simply is no way
 11 to know today one way or another with certainty;
 12 correct?
 13 A. No.
 14 Q. All right. Now, October 8, 2009, this
 15 accident occurs on Angel Valley and you were
 16 present -- well, you came down to the scene when
 17 the helicopters arrived; correct?
 18 A. Correct.
 19 Q. And you were present, then, when
 20 detectives from the Yavapai County Sheriff's Office
 21 and deputy sheriffs arrived on scene; correct?
 22 A. **They were already there by the time I got**
 23 **there.**
 24 Q. All right. They were there when you were
 25 there; correct?

1 A. Correct.
 2 Q. And the next morning, on October 9, 2009,
 3 you did see perimeter tape sealing off the area;
 4 correct?
 5 A. I did.
 6 Q. And you understood that that perimeter
 7 tape was to prevent anyone from going in and
 8 disturbing the scene; correct?
 9 A. Yes.
 10 Q. Because the investigation was still
 11 ongoing; correct?
 12 A. Yes.
 13 Q. And at some point the detectives took
 14 down the perimeter tape and released the scene to
 15 you; correct?
 16 A. Yes.
 17 Q. And that occurred on October 9, 2009, in
 18 the latter part of the day; correct?
 19 A. Yes.
 20 Q. And so once the scene was released to you
 21 the very next morning, on Saturday, October 10,
 22 2009, you conducted what you call a "cleansing
 23 ceremony"; correct?
 24 A. Yes.
 25 Q. And that was within 48 hours of this

1 accident occurring on your land; correct?
 2 A. Yes.
 3 Q. And in this cleansing ceremony -- let's
 4 take a look at Exhibit 231, which has already been
 5 in evidence, sir.
 6 May I approach, Your Honor?
 7 THE COURT: Yes.
 8 MS. DO: Thank you.
 9 Q. Exhibit 231, Mr. Hamilton. You recognize
 10 the scene in that photograph; correct?
 11 A. I do.
 12 Q. And -- okay. This is a photograph taken
 13 Saturday, October 10, 2009; correct?
 14 A. Yes.
 15 Q. 48 hours from the accident; correct?
 16 A. Yes.
 17 Q. And we see the wooden frame bare, meaning
 18 all the material, tarps, the blankets, have been
 19 stripped off of the frame; correct?
 20 A. Correct.
 21 Q. And you personally were involved in that
 22 takedown of the structure; correct?
 23 A. I was.
 24 Q. And your wife, Amayra Hamilton; correct?
 25 A. Correct.

1 Q. Fawn Foster?
 2 A. Correct.
 3 Q. Ted and Debbie Mercer?
 4 A. Yes.
 5 Q. And some of the participants who had
 6 remained that you had invited to the cleansing
 7 ceremony; correct?
 8 A. Yes.
 9 Q. Now, in the background of this
 10 photograph, do we see all the tarps and the
 11 blankets that were taken off of the sweat lodge
 12 structure?
 13 A. Yes.
 14 Q. Okay. Now, you took down the frame
 15 branch by branch, I understand. Is that correct?
 16 A. Yes.
 17 Q. And then what did you do with the
 18 branches?
 19 A. **They were all burned.**
 20 Q. They were all burned; correct?
 21 A. Yes.
 22 Q. I'm going to show you what's been
 23 admitted into evidence as 560. Do you recognize
 24 who's depicted in that photograph?
 25 A. I do.

1 Q. That's you and your wife; correct?
 2 A. **Correct.**
 3 Q. And that's you and your wife watching the
 4 branches of the sweat lodge structure burning
 5 within 48 hours of the accident; correct?
 6 A. **Yes.**
 7 Q. And in the background behind the fire
 8 there is tarp and materials; correct?
 9 A. **Correct.**
 10 Q. From the sweat lodge structure?
 11 A. **Yes.**
 12 Q. Correct?
 13 Now, what did you do with the
 14 materials -- the tarps and the -- the tarps and the
 15 blankets.
 16 A. **I loaded them in my van and took them**
 17 **down to the Camp Verde dumb station.**
 18 Q. What did you do before you loaded them in
 19 your van? What did you do to them, if anything,
 20 before you loaded them into the van?
 21 A. **Rolled them up and put them in my van.**
 22 Q. Okay. Let's take a look at 563, which is
 23 also already in evidence.
 24 That's you in the photograph; correct?
 25 A. **Correct.**

1 Q. And you seem to be holding a tarp;
 2 correct?
 3 A. **Yes.**
 4 Q. And what are you doing to the tarp, sir?
 5 A. **Appears like I'm cutting it, making them**
 6 **smaller pieces.**
 7 Q. Before you haul it away; right?
 8 A. **Yes.**
 9 Q. So you're cutting up the tarps. Did you
 10 do that to all of the tarps?
 11 A. **I would say not to all of them. Some of**
 12 **them. The ones that were heavy. Like, the**
 13 **rubberized one was a large tarp. And that's what**
 14 **it looks like I have. I'm not sure.**
 15 Q. When you took down the materials from the
 16 sweat lodge frame, Mr. Hamilton, did you notice
 17 four areas in which the tarps and materials had
 18 been cut?
 19 A. **Yes.**
 20 Q. And those would have been the four areas
 21 in which the tarps were cut by the detectives;
 22 correct?
 23 A. **Yes.**
 24 Q. And other than those four areas that were
 25 cut and taken by the detectives, the left -- the

1 rest was left with you; is that right?
 2 A. **Yes.**
 3 MS. DO: Your Honor, I have 546, 548, and 560,
 4 which I think counsel is agreeing to. I move for
 5 their admission.
 6 MS. POLK: Your Honor, the state agrees with
 7 the admission.
 8 THE COURT: 546, -48, and -50 are admitted.
 9 (Exhibits 546, 548, and 550 admitted.)
 10 MS. DO: Thank you.
 11 Q. Mr. Hamilton, I'm showing you three
 12 photographs now admitted into evidence. That
 13 morning before you started to take down the sweat
 14 lodge structure and burn or tear anything down, you
 15 did see sections of the tarp cut out; correct?
 16 A. **I did.**
 17 Q. So let's take a look at 546. Now, in
 18 this photograph -- I think it looks a little bit
 19 blue -- is this the brown tarp, if you know?
 20 A. **The top layer would be brown.**
 21 Q. Okay. So it could be just the
 22 photograph; right?
 23 A. **Yes.**
 24 Q. Now, we're looking at -- I've zeroed in
 25 or zoomed in on a section. Is that the section --

1 one of the sections of the tarps that were cut out?
 2 A. **Yes.**
 3 Q. All right. And you saw that on the
 4 morning of October 10, 2009; correct?
 5 A. **I did.**
 6 Q. Now, did you notice that there were four
 7 areas about the same size, one-by-one, cut out of
 8 the tarps and materials?
 9 A. **I would not have known the exact number,**
 10 **but I thought three or four. Yes.**
 11 Q. Three or four; is that right?
 12 A. **Yes.**
 13 Q. Let's look at the other one, then, which
 14 is 548. That's another section of the tarp that's
 15 cut; correct?
 16 A. **Yes.**
 17 Q. And the other number that you have is
 18 550?
 19 A. **Yes.**
 20 Q. That's another section; correct?
 21 A. **Correct.**
 22 Q. And then after they took those discrete
 23 sections of the tarps and materials, everything
 24 else was left with you; right?
 25 A. **Yes.**

1 Q. And you cut them up and then you hauled
2 them away?
3 A. I did.
4 Q. All right. Can you tell the jury how
5 much in terms of square footage of materials you
6 cut and hauled away?
7 A. No.
8 Q. Could you give an estimate.
9 A. **A Town and County van load in the back of**
10 **the Town and Country. It was filled from bottom to**
11 **top and the length of the bed.**
12 Q. Quite a bit; correct?
13 A. Yes.
14 Q. You also then -- at some point after
15 burning the frame, cutting up the tarps and
16 materials and hauling them away, you then took the
17 rocks that were left behind; correct -- the
18 grandfathers?
19 A. **My wife did that. I did -- I did not**
20 **pull any rocks out myself. You would have to talk**
21 **to her about what she did exactly with the rocks.**
22 Q. Okay. But you were present when that
23 occurred; correct? You were there at the
24 ceremony --
25 A. **I was there at the ceremony, but I did**

1 **not pull any of the rocks out myself.**
2 Q. Okay. But did you see that a lot of the
3 rocks were left behind by the detectives in that
4 spot -- in that pit?
5 A. Yes.
6 Q. Okay. Could you tell this jury
7 approximately how many rocks were left behind?
8 A. **No. I don't know.**
9 Q. Was it more than ten?
10 A. **I don't know.**
11 Q. You ultimately took those rocks that were
12 left behind by the detectives and used it to make a
13 memorial; correct?
14 A. **My wife was in charge of that. Laying**
15 **out the actual rocks, that was my wife. So how**
16 **many were there, I don't know. She's the one you**
17 **would have to get that clearly from.**
18 Q. Well, you were present at the ceremony
19 from beginning to end, were you not?
20 A. Yes.
21 Q. And you were present when, among other
22 things, the rocks were taken out of the pit;
23 correct?
24 A. **I was not watching the rocks being taken**
25 **out of the pit.**

1 Q. I understand that. What I'm asking you
2 is were you present when the rocks were taken out?
3 A. **Was I on the site? Yes.**
4 Q. Okay. And at some point, because it's
5 your land, Mr. Hamilton, you do -- I think today
6 you have a memorial there; correct?
7 A. **We do.**
8 Q. And you've walked by that; correct?
9 A. **We do.**
10 Q. So you know from walking by it, from
11 personal knowledge, that the rocks taken out of the
12 pit have been used now to create the circumference
13 of that memorial?
14 A. **Yes.**
15 Q. And it's a lot of rocks; correct?
16 A. **The exact number of rocks that are there**
17 **and the exact number -- I know the ones that came**
18 **out of the fire pit itself were the ones used in**
19 **the actual heart. Not the circumference. You have**
20 **to check with my wife on how all those rocks --**
21 **because there's two -- there's the heart. And**
22 **those are the ones that were actually in the -- in**
23 **the sweat lodge, in the physical lodge.**
24 **The other rocks, Amayra gathered those**
25 **with the other -- you know -- and put them out.**

1 **But I'm not sure where they all came from.**
2 Q. Okay. Thank you for that clarification.
3 This is 561, which has been admitted into
4 evidence. This is now the side of the sweat lodge
5 within 48 hours. The frame has been broken down
6 and burned; correct?
7 A. **Yes.**
8 Q. The tarps and the blankets have been cut
9 up and hauled away; correct?
10 A. **Yes.**
11 Q. And the rocks that were in the pit have
12 been taken out to create this; correct?
13 A. **Correct.**
14 Q. And so those were all the rocks that were
15 left behind by the detectives; correct?
16 A. **Correct.**
17 Q. Now, the wood we still see in this
18 photograph; correct?
19 A. **Correct.**
20 Q. But at some point you also hauled away
21 all of that wood; correct?
22 A. **At some point, yes.**
23 Q. Do you know how long after the cleansing
24 ceremony on October 10?
25 A. **No, I do not.**

1 Q. All right. Let's take a look at 564,
2 which has already been admitted into evidence.
3 This is a photograph of the memorial site
4 where the sweat lodge used to be; correct?

5 A. Correct.

6 Q. And this is what was done to that site
7 after the accident within 48 hours; correct?

8 A. Correct.

9 Q. And we can see here that there are rocks
10 forming --

11 A. Well, let me back up.

12 Q. Sure.

13 A. I don't believe everything was done --
14 this was not done within 48 hours.

15 Q. The scene that we see here?

16 A. No. It was done after that.

17 Q. Okay. Sometime after the frame's burned,
18 the materials are hauled away, the rocks are taken
19 out, at some point you came back and, essentially,
20 cleaned or refined the site; correct?

21 A. Correct.

22 Q. And here -- did you do anything to the
23 dirt, the sand?

24 A. Just raked it.

25 Q. You raked the sand; correct?

1 A. Yes.

2 Q. And do you know how long after the
3 accident it was that you raked the sand?

4 A. No.

5 Q. I believe Ms. Polk asked you some
6 questions about a -- a material that was laid
7 underneath the sand.

8 A. Yes.

9 Q. That formed the floor of the sweat lodge?

10 A. No. It was the weaved fabric that was
11 underneath the sand.

12 Q. That's what I meant. Thank you. The --
13 and you called it a nylon?

14 A. I don't know what it's made of. It's a
15 weaved fabric.

16 Q. What happened to that?

17 A. It's still there.

18 Q. It is still there?

19 A. Yeah.

20 Q. Does detectives know that? Did you tell
21 him that?

22 A. Nobody asked me.

23 Q. Okay. Now, so you raked the land. And
24 then the rocks were taken out and formed -- to form
25 this memorial that we see here; correct?

1 A. The rocks that came out of the fire pit
2 were actually the ones creating the heart. My wife
3 will be able to explain where the others other ones
4 came from and where they were before they got
5 there.

6 Q. Okay. And this is what you're referring
7 to; correct?

8 A. Yes.

9 Q. All right. Now, I was asking you about
10 the wood that we saw in 561. And seeing how the
11 site is not yet completed, does this tell you that
12 this photograph was taken on the same day of
13 October 10, 2009?

14 A. Around that date. I cannot swear that
15 was done -- because I'm not sure who took it, and
16 I'm not -- because that remained like that for a
17 little while afterward. It was not -- the timing
18 my wife would know exactly. I do not.

19 Q. All right. I'm going to zero in. We see
20 that same pile of lumber wood that you described
21 earlier; correct?

22 A. Doesn't look like exactly the same
23 picture that you had before.

24 Q. No. It's a different picture. But I'm
25 asking you, is that the same pile?

1 A. I didn't see that pile before. You
2 showed me another pile.

3 Q. Okay. Let me make sure. I don't want to
4 confuse you, Mr. Hamilton. 493. Do you see this
5 pile?

6 A. Okay.

7 Q. It's right in front of the D logs;
8 correct?

9 A. Yes.

10 Q. And let's take a look back at 561. And
11 what I'm asking you is that -- is that the same
12 scene, the back of the --

13 A. Looks like. Yes. It looks like the same
14 one.

15 Q. Okay. And so you do see smaller pile of
16 the lumber wood; correct?

17 A. Yes.

18 Q. And so that tells you that was left
19 behind and not taken as evidence by the detectives;
20 correct?

21 A. Correct.

22 Q. Okay. Now, at some point you did haul
23 away all of that wood, the smaller pile and the
24 stack of D logs; correct?

25 A. Correct.

1 Q. Let's show you 576 and 577.
 2 Your Honor, I move for the admission of
 3 these, and I don't think Ms. Polk is objecting?
 4 MS. POLK: Your Honor, the state does object
 5 at this point. It's not clear that this witness
 6 knows the date that these later photographs were
 7 taken.

8 THE COURT: Okay.
 9 Foundation.

10 Q. BY MS. DO: Do you -- first of all, let
 11 me ask you if you recognize what's depicted in
 12 those photographs?

13 A. I do.

14 Q. Do you see your wife in it?

15 A. I do.

16 Q. That's your property; correct?

17 A. Correct.

18 Q. And based upon the appearance of that
 19 photograph, does it tell you that those were taken
 20 sometime after the photograph we see up on the
 21 projector now -- 561?

22 A. Yes.

23 Q. And how does -- how do you know that it's
 24 a photograph taken after 561?

25 A. The stack of lumber is not there.

1 Q. Right?

2 A. Yeah.

3 Q. You hauled it away; correct?

4 A. Yes.

5 Q. Including the smaller pile?

6 A. Yes.

7 Q. And those photos in front of you you know
 8 were taken after 561 because the wood is all gone?

9 A. Yes.

10 Q. Correct?

11 MS. DO: Your Honor, I move for the admission.

12 THE COURT: Ms. Polk.

13 MS. POLK: Your Honor, again, foundation as to
 14 time when these photographs were taken. How much
 15 time after this photograph were these photographs
 16 taken?

17 MS. DO: These were taken by the state.

18 THE COURT: If you could ask that, Ms. Do.

19 MS. DO: Sure.

20 Q. First of all, you recognize these photos
 21 as photos taken by the detectives; correct? You
 22 didn't take them.

23 A. I don't know who took them.

24 Q. Okay. Now, do you know whether or not on
 25 October 29, 2009, Detective Diskin came back to

1 Angel Valley to collect some more soil samples?

2 A. No. I do not know that for sure. No.

3 Q. Okay. Do you know at any point Detective

4 Diskin returning to Angel Valley to collect soil?

5 A. I remember some comment about him coming
 6 back. Yes. But I was not there when he did it.

7 Q. Okay. So at some point you did become
 8 aware he came back but you weren't physically
 9 present; is that correct?

10 A. Yes.

11 Q. All right. I'm going to move on.

12 But it's clear from those photographs or
 13 from your own memory that you hauled away all of
 14 that wood; correct?

15 A. Yes.

16 Q. What did you do with it?

17 A. Went over to a -- a pile we had. We then
 18 cut up the balance of the wood. And as you drive
 19 into our property, we have one lumber area, and we
 20 then started stacking firewood. As we cut it up,
 21 we created stacks and stacks of firewood.

22 So all the other piles, this one,
 23 including the other piles of wood that were in the
 24 earlier photo -- these were all cut up into
 25 anywhere from 18- to 24-inch pieces and stacked

1 neatly for people to come in and buy them.

2 Q. I'm going to go back to 562, which we
 3 looked at earlier.

4 You told this jury that that wood that we
 5 see there had been sitting on your land for about
 6 five years, and it was in November or December
 7 of 2009 that you then decided it was time to get
 8 rid of it; correct?

9 A. Yes.

10 Q. Along with the wood that was used at the
 11 site of the ceremony; correct?

12 A. Yes.

13 Q. You did this all within 48 hours after
 14 the accident; correct?

15 A. I did what after 48 hours?

16 Q. Take down the structure.

17 A. Yes.

18 Q. Okay. And you'd -- you had taken down
 19 the structure within 48 hours after the accident
 20 when there was, as we had talked about at the very
 21 beginning of my conversation with you, negative
 22 public scrutiny about Angel Valley and the
 23 structure; correct?

24 A. There was negative publicity around many
 25 things. I -- I believe I shared I was not aware of

1 a particular issue within 48 hours that, oh, the
2 structure is this or that.

3 Q. Okay. So the sweat lodge structure was
4 taken down before any inspection of it could be
5 done; correct?

6 A. No. The detectives, are they not -- to
7 my knowledge, they were the ones inspecting the
8 property, inspecting the sweat lodge, inspecting
9 everything.

10 And when I was told on Friday evening the
11 site is removed, I said, is it okay, then, to take
12 the lodge down? They said, yes. So for me, that
13 was the inspection that was required. And no one
14 ever said anything about keep it, don't do this,
15 don't do that.

16 They were free to take whatever they
17 wanted, do whatever they wanted. But when they
18 said it was ours to do what we wanted, we then did
19 what we were guided to do, as I shared.

20 I was going to cut it up with a chain
21 saw. I was that hurt, in pain. And my wife said,
22 no, no. We want to do a ceremony. And everybody
23 gathered around and supported that, as did I. I'm
24 glad I did go through the ceremony rather than what
25 I was -- again, I was in a distraught place.

1 Q. All right. Thank you, Mr. Hamilton.
2 When you told the detectives -- when they
3 released the scene to you, did you tell them that
4 you had intended to tear down the structure, burn
5 the materials, and haul away the tarps and the
6 blankets?

7 A. Yes.

8 Q. And they knew that --

9 A. I said, we're planning to get rid of it.

10 Q. All right. What I'm asking -- and I'm
11 sorry if I wasn't clear. I understand the
12 detectives had a chance to view the sweat lodge.
13 But if anyone had a question about the safety of
14 the structure, whether or not it would have been
15 permitted or not, the structure was taken down
16 before any inspection could be done by the county;
17 correct?

18 Do you understand the question?

19 A. No. Because the detectives work for the
20 county.

21 Q. Earlier we talked about the fact that you
22 had become aware within the aftermath of the
23 accident that there were criticisms about the
24 structure not being permitted, that it was
25 makeshift, and it was faulty.

1 Do you remember that line of questioning?

2 A. Yes. And I told you I did not know for
3 sure the day after on that Saturday that it was
4 going after the lodge itself. We got rid of it
5 because it was out of alignment. People died
6 there. We needed to continue our business.

7 So we went in and we did the most
8 honorable thing we could. And that is to --
9 honoring the people that died is to burn the lodge,
10 which is the traditional way of doing it, and get
11 on with putting our lives back together again.

12 Q. I understand, Mr. Hamilton. And let's --
13 I'll ask the questions. You give the answers so
14 the jurors can decide what to do with the facts.
15 Okay?

16 My question to you is this: When we
17 began this morning, we talked about how in the
18 aftermath of the accident you became aware that
19 there was negative public scrutiny about Angel
20 Valley and the construction of the sweat lodge.
21 True or not true?

22 A. I said there was --

23 Q. I'm not putting a time frame on it. If
24 you listen to the question, I'm not saying you
25 learned about it on the 9th, the 10th. I'm saying

1 that in the aftermath after the accident, you did
2 become aware. Correct?

3 A. After the lodge was physically taken down
4 I became aware that people were questioning the
5 structure of the lodge. It was afterwards. That
6 morning I did not know anybody questioning the
7 lodge itself.

8 Q. This morning you had told the jury that
9 you learned about it on October 9, 2009, and
10 then -- let me finish the question, please. And
11 then after that you said you weren't sure about the
12 time frame. Do you remember that? Do you remember
13 that?

14 A. I remember part of what I said. Yes.

15 Q. You told the jury -- after the first
16 answer, you then told the jury that you just simply
17 don't remember when it was that you heard A, B, C.
18 Do you remember that?

19 MS. POLK: Judge, objection. Mischaracterizes
20 his earlier testimony. Counsel is arguing with the
21 witness, and this is all asked and answered.

22 THE COURT: Sustained.

23 Q. BY MS. DO: You're now telling this jury
24 that you remember specifically -- correct? -- that
25 you heard about the scrutiny -- I'm sorry -- the

1 criticisms about Angel Valley and the construction
 2 after you took down the structure.
 3 Is that your testimony now?
 4 MS. POLK: Same objection.
 5 THE COURT: Overruled.
 6 THE WITNESS: May I be clear with exactly what
 7 I'm saying?
 8 Q. BY MS. DO: I'd be happy to give you the
 9 opportunity to explain it, but I want the jury to
 10 get an answer.
 11 Did you --
 12 MS. POLK: Your Honor, objection. This --
 13 THE COURT: Let me interrupt you, Ms. Polk.
 14 Mr. Hamilton, if you can answer a
 15 question yes or no, please do it that way. If you
 16 can't, it's legitimate to say I cannot answer yes
 17 or no, if that's what you have to do. Listen to
 18 the lawyer's questions and then answer in that
 19 fashion --
 20 THE WITNESS: Thank you.
 21 THE COURT: -- if you would.
 22 Thank you.
 23 MS. DO: Thank you, Your Honor.
 24 Q. Mr. Hamilton, my question is this: Did
 25 you just now tell the jury that you recall hearing

1 the criticisms of the construction of the sweat
 2 lodge -- whether it was makeshift, faulty, not
 3 permitted, you now remember that that came to your
 4 attention after you took down the structure. Is
 5 that your testimony now? Yes or no?
 6 A. Yes.
 7 Q. Do you believe that to be in any way
 8 inconsistent with what you told this jury this
 9 morning?
 10 A. No.
 11 Q. All right. You talked to
 12 Detective Diskin on a number of occasions; correct?
 13 A. Yes.
 14 Q. And if I understand correctly, on the
 15 night of the 8th, you did not speak to any
 16 detectives in the sense of giving any formal
 17 statement. Correct?
 18 A. Correct.
 19 Q. No one interviewed you; correct?
 20 A. Correct.
 21 Q. But you were around if somebody wanted to
 22 interview you; correct?
 23 A. Yes.
 24 Q. Now, on the 20th of October 2009, you
 25 called Detective Diskin. Do you remember that?

1 A. Not offhand. No.
 2 Q. Do you remember calling Detective Diskin
 3 within a few weeks of the accident?
 4 A. My wife did most of the conversations and
 5 phone calls. I cannot say whether I did or Amayra
 6 did. I don't remember.
 7 Q. Would it refresh your recollection to
 8 look at a transcript of that?
 9 A. Sure.
 10 Q. Let me approach you with 661. And take
 11 your time in looking at that and let me know if it
 12 refreshes your memory.
 13 A. Vaguely.
 14 Q. That's a transcript of a phone call
 15 between you and Detective Diskin; correct?
 16 MS. POLK: Your Honor, objection.
 17 THE WITNESS: It's between Hamilton and
 18 Diskin. And I'm not sure which Hamilton.
 19 Q. BY MS. DO: You're not sure if that's
 20 you?
 21 A. No.
 22 Q. You believe you --
 23 A. I'm sorry. Yes. Yes. It is me.
 24 Q. It is you; correct?
 25 A. Yes, it is.

1 Q. Because I have the audio here,
 2 Mr. Hamilton, if you want to be certain.
 3 A. No. It is.
 4 Q. In looking at that transcript, does it
 5 help you remember that you called Detective Diskin
 6 on October 20th, 2009?
 7 A. Says I did. Yes.
 8 Q. Okay. You have no reason to dispute that
 9 that's the correct date; correct?
 10 A. No. I do not.
 11 Q. Now, when you called Detective Diskin on
 12 October 20th, you told him that you would not talk
 13 to him until you spoke to your attorney; correct?
 14 A. Correct.
 15 Q. And your attorney on that date is
 16 different than the attorney you have in court here
 17 today; correct?
 18 A. Correct.
 19 Q. You told Detective Diskin that you were
 20 going to go talk to your attorney and then you
 21 wanted to sit down and give a statement. Is that
 22 correct?
 23 A. Correct.
 24 Q. And that would be 12 days after the
 25 accident occurred; correct?

1 **A. Yes.**

2 **Q.** You also told Detective Diskin on
3 October 20th that he needed to interview Fawn
4 Foster, your employee at the time; is that correct?
5 MS. POLK: Your Honor, may I have a moment
6 with counsel?

7 THE COURT: Yes.

8 (Pause in proceedings.)

9 MS. DO: Your Honor, Ms. Polk has pointed out
10 to me that the transcript Mr. Hamilton is looking
11 at is 807. So I stand corrected.

12 THE COURT: Okay.

13 MS. DO: Thank you, Ms. Polk.

14 **Q.** The transcript you're looking at, which
15 is --

16 887, Your Honor.

17 The transcript that you're looking at is
18 887, for the record.

19 **A. Okay.**

20 **Q.** Do you remember calling Detective Diskin
21 on October 20th and also telling him that he needed
22 to interview your employee, Fawn Foster?

23 **A. I don't remember. But it's likely I did.**

24 **Q.** And you also told Detective Diskin that
25 that interview could be arranged after you and your

1 wife talked to your attorney; correct?

2 **A. Correct.**

3 MS. POLK: Your Honor, objection to the
4 hearsay nature of this line of questioning.

5 MS. DO: I'm not offering it for the truth,
6 Your Honor.

7 THE COURT: Overruled.

8 **Q.** BY MS. DO: Now, after you called
9 Detective Diskin and offered to arrange this
10 interview with Fawn Foster, you then did, in fact,
11 sit down and have an interview with
12 Detective Diskin; correct?

13 **A. Yes.**

14 **Q.** And do you recall that occurring on
15 October 26, 2009?

16 **A. Sounds about right.**

17 **Q.** Will it refresh your memory to look at
18 the transcript of that?

19 **A. Yes.**

20 **Q.** All right. I'm going to hand you what is
21 correctly marked as 661. And let me know when
22 you've had a chance to review it.

23 **A. Yes.**

24 **Q.** All right. Looking at that -- do you
25 want to look through the pages at all?

1 **A. Depends on your question.**

2 **Q.** I just want to make sure that it's --

3 **A. No. This is the one.**

4 **Q.** It's the interview. Okay. And that
5 interview took place at Angel Valley property;
6 correct?

7 **A. It did.**

8 **Q.** And Detective Diskin and another
9 detective named Mike Poling came to see you;
10 correct?

11 **A. Correct.**

12 **Q.** And on that date that conversation, like
13 a phone call, was also tape-recorded?

14 **A. Correct.**

15 **Q.** And you sat down with Detectives Diskin
16 and Poling, and you had your attorney present;
17 correct?

18 **A. Correct.**

19 **Q.** And prior to sitting down with Detectives
20 Diskin and Poling, had you all reached some sort of
21 agreement about whether or not you would be
22 criminally charged or investigated?

23 **A. No. There was never an agreement.**

24 **Q.** From the time that you called
25 Detective Diskin on October 20th, 2009, to the time

1 that you interviewed on October 26th, did you have
2 any further conversations yourself with
3 Detective Diskin?

4 **A. I don't remember.**

5 **Q.** It could be possible?

6 **A. I don't remember whether I did or not.**
7 **No.**

8 **Q.** All right. What's the first thing that
9 Detective Diskin told you when you sat down with
10 you and your attorney on October 26? Do you
11 remember?

12 **A. Based on the transcript, we made this
13 clear before, you're not under criminal
14 investigation.**

15 **Q.** That's the first thing the detective said
16 to you on October 26; correct?

17 **A. Yes.**

18 **Q.** Is we made this clear before, but you're
19 not under investigation criminally. Okay?

20 **A. Okay.**

21 **Q.** Is that correct?

22 **A. Yes.**

23 **Q.** And you remember that?

24 **A. Yes.**

25 **Q.** And you responded, yeah. I heard that.

1 Correct?
 2 **A. Yes.**
 3 **Q.** So when -- when Detective Diskin said, we
 4 made this clear before, what is the "before"
 5 referring to?
 6 **A. I'm not sure.**
 7 **Q.** All right.
 8 **A. I don't know.**
 9 **Q.** And you understood when he told you,
 10 we're making this clear, you're not under
 11 investigation criminally, that meant they weren't
 12 looking at you as a target in this investigation;
 13 correct?
 14 **A. Yes.**
 15 **Q.** They weren't looking at your wife as a
 16 target in this investigation; correct?
 17 **A. Correct.**
 18 **Q.** Or any of the employees of Angel Valley;
 19 correct?
 20 **A. I took this to mean that my wife and I**
 21 **were not under investigation from a criminal**
 22 **perspective.**
 23 **Q.** And Fawn Foster also spoke with the
 24 detectives that day; correct?
 25 **A. Yes.**

1 **Q.** After you and Amayra sat down with them;
 2 correct?
 3 **A. Yes.**
 4 **Q.** And she also had the benefit of the
 5 attorney. And I believe his name was Mark
 6 Zukowski. Correct?
 7 **A. Yes.**
 8 **Q.** And you paid for Mark Zukowski to
 9 represent Ms. Foster?
 10 **A. I did not.**
 11 **Q.** Who paid?
 12 **A. The insurance company.**
 13 **Q.** That represents you?
 14 **A. Yes.**
 15 **Q.** Correct?
 16 **A. Yes.**
 17 **Q.** Now, right after Detective Diskin says to
 18 you, we made this clear before, but you're not
 19 under investigation criminally -- okay -- what's
 20 the first question you asked him?
 21 **A. Yeah. I heard that.**
 22 **Q.** What's the first question you asked? If
 23 you remember.
 24 **A. I don't remember. I'd have to read it.**
 25 **The first statement I made was, yeah. I**

1 **heard that. That put me on the wall. I'm not sure**
 2 **what I meant by that.**
 3 **Q.** Mr. Hamilton, right now do you remember
 4 what the first question was that you asked
 5 Detective Diskin after he told you you were not
 6 being criminally investigated? If you don't
 7 remember, that's okay.
 8 **A. No, I don't. I'm looking and the first**
 9 **statement I made was that.**
 10 **Q.** Take a look at page 1, lines 9 to 10.
 11 **A. Okay.**
 12 **Q.** Do you now remember what it was that you
 13 first asked him?
 14 **A. Yes.**
 15 **Q.** And what was that question?
 16 **A. But anyway, it's good to be clear. Where**
 17 **do we stand so far as the autopsy and the cause of**
 18 **death? How close are we to that?**
 19 **Q.** That's the first question you asked the
 20 detective?
 21 **A. After my other statements, yes.**
 22 **Q.** I'm not asking about statements. I know
 23 you made some statements. But I'm asking you about
 24 the first question you asked him.
 25 **A. Yes.**

1 **Q.** The first question you asked him is,
 2 where do we stand so far on the autopsy and the
 3 cause of death? How close are we to that?
 4 Correct?
 5 **A. Yes.**
 6 **Q.** And that's literally within the first few
 7 seconds of you sitting down with the detective and
 8 the tape started; correct?
 9 **A. Yes.**
 10 MS. POLK: Your Honor, pursuant to Rule 106,
 11 the state would ask that the remainder of that
 12 question be -- and answer be given to the jury.
 13 Or, in the alternative, the state would
 14 move for the admission of Exhibit 661.
 15 THE COURT: Ms. Do.
 16 MS. DO: I think counsel knows that's not
 17 appropriate. But I would be happy to play the
 18 audio clip from lines 1 through 20.
 19 MS. POLK: The state would agree to that.
 20 THE COURT: Okay. That clip will be played.
 21 MS. DO: And that's, for the record, Your
 22 Honor, time stamped 02:52. And that's Exhibit 660.
 23 THE COURT: Once again, there will need to be
 24 a specific exhibit with this excerpt.
 25 MS. DO: It's Exhibit 660, Your Honor. And

1 I'm indicating the time. That's sufficient. I
 2 think we've --
 3 THE COURT: Okay.
 4 MS. DO: Okay.
 5 MS. POLK: Counsel, Exhibit 661?
 6 THE COURT: That's what I have. 661.
 7 MS. DO: Thank you. 661.
 8 THE COURT: Thank you.
 9 (Exhibit 661 played.)
 10 Q. BY MS. DO: That was the initial
 11 conversation between you and Detective Diskin;
 12 correct?
 13 A. Yes.
 14 Q. Now, you understood that you were not
 15 being criminally investigated by the detectives for
 16 anything; correct?
 17 A. Correct.
 18 Q. And your wife was under that same
 19 agreement or understanding?
 20 A. Yes.
 21 Q. Was that same agreement or understanding
 22 also extended to --
 23 MS. POLK: Objection, Your Honor. There is no
 24 agreement. That misstates the transcript.
 25 THE COURT: Sustained.

1 Q. BY MS. DO: In your mind, did you see
 2 that as a grant of immunity? Do you know what that
 3 means?
 4 A. Yes. I did not see it as a grant of
 5 anything.
 6 Q. All right. Do you know what that means
 7 first?
 8 A. Immunity?
 9 Q. Yes.
 10 A. Yes.
 11 Q. Okay. And in your mind, when the
 12 detective said, you're not under investigation
 13 criminally, that didn't mean to you that you were
 14 getting immunity?
 15 A. Not at all.
 16 Q. Okay. You did understand that you were
 17 not at all a target; correct?
 18 A. Yes.
 19 Q. It became clear to you, though, however,
 20 that the target of their investigation was James
 21 Ray?
 22 A. For me they were looking at what happened
 23 that evening -- you know -- so I really took out of
 24 that that they were looking to get all the
 25 information on what occurred.

1 Q. But they immediately told you you were
 2 not under criminal investigation; correct?
 3 A. Right.
 4 Q. So that left Mr. Ray?
 5 A. Yes, it did.
 6 Q. And as you became familiar in contacts
 7 with the state, the detectives, you understood that
 8 the target of the investigation was Mr. Ray?
 9 A. Yes.
 10 Q. Now, after you and Amayra sat down with
 11 Detectives Diskin and Poling, understanding that
 12 you were not targets of this investigation, Fawn
 13 Foster then sat down with the detectives; correct?
 14 A. Yes.
 15 Q. And she was interviewed separately;
 16 correct?
 17 A. Correct.
 18 Q. And Detective Diskin, I believe, told you
 19 that it was very important -- very important to
 20 take a witness statement without other witnesses
 21 present; correct?
 22 A. Correct.
 23 Q. And that was because it was important to
 24 get a witness statement untainted by the presence
 25 of another witness; correct?

1 A. Correct.
 2 Q. And so they interviewed Fawn Foster with
 3 just Mark Zukowski, the attorney; correct?
 4 A. Correct.
 5 Q. Have you had any opportunity to review
 6 the transcript of Ms. Foster's statement?
 7 A. Never.
 8 Q. Ever spoken to her about the subject of
 9 her statement?
 10 A. No.
 11 Q. The reason why you offered Fawn Foster to
 12 the detectives for an interview is because you
 13 came -- and I'm not asking you what it is -- you
 14 came to learn that Ms. Foster said she heard or saw
 15 some things; correct?
 16 A. Correct.
 17 Q. Down at the site of the sweat lodge
 18 ceremony on October 8; correct?
 19 A. Correct.
 20 Q. Now, if I understand right, Ms. Foster
 21 was there on October 8, 2009, when the sheriffs
 22 arrive. Correct?
 23 A. Yes.
 24 Q. So there were sheriffs there that she
 25 could have provided a statement to; correct?

1 MS. POLK: Objection, Judge. Lack of
2 foundation for this witness.
3 THE COURT: Sustained.
4 Q. BY MS. DO: You understood Ms. Foster was
5 on the property on October 8?
6 A. **Correct.**
7 Q. You also saw sheriffs on the property on
8 October 8; correct?
9 A. **I did.**
10 Q. When was it -- and I'm not asking you for
11 the hearsay. When was it that Ms. Foster told you
12 she had a story that she needed to tell?
13 MS. POLK: Judge, objection to the use of the
14 word "story."
15 THE COURT: Mr. Hamilton, if you can answer
16 the question -- if it's phrased in a matter that
17 you can answer, go ahead and do that. If you
18 can't, then let the attorney know.
19 THE WITNESS: I don't know.
20 Q. BY MS. DO: Was it the next day?
21 A. **I don't know.**
22 Q. Two days after that?
23 A. **I don't know.**
24 Q. All right. So sometime between
25 October 8, 2009, and October 20, 12 days later,

1 somewhere in between those to days -- right? -- you
2 had learned from Fawn Foster that she had seen or
3 heard something; correct?
4 A. **Yes.**
5 Q. And then based upon that you called the
6 detectives and said, hey, you need to interview
7 her; correct?
8 A. **I do not fully remember me out of the**
9 **blue just picking up the telephone. Oh, by the**
10 **way, Ross, I need to talk to you. I don't remember**
11 **that.**
12 Q. When you say "Ross," you mean Detective
13 Diskin?
14 A. **I'm sorry. Detective Diskin.**
15 Q. So -- and I understand it's been a while,
16 Mr. Hamilton. And I'm -- I'm not trying to get you
17 to stretch your memory here. But it was sometime
18 between October 8 and October 20 -- correct? --
19 that you would have learned from Fawn Foster that
20 she had something to say?
21 A. **Yes.**
22 Q. And then on October 20th, when you made
23 that phone call, you reviewed the transcript of
24 that phone call that you told Detective Diskin, oh,
25 by the way, you should talk to Fawn Foster;

1 correct?
2 A. **Yes.**
3 Q. And then you arranged for that interview
4 to take place at the property on October 26?
5 A. **When our attorney was present. Yes.**
6 Q. Okay. So is it your understanding, based
7 upon these set of circumstances, the first person
8 Ms. Foster provided her statement to would have
9 been you and Amayra Hamilton?
10 MS. POLK: Objection. Foundation for this
11 witness.
12 THE COURT: Sustained.
13 Q. BY MS. DO: When you were telling the
14 detectives that they need to interview Ms. Foster,
15 because you were aware that she had not previously
16 given a statement; correct?
17 A. **Correct.**
18 Q. And so based upon your personal knowledge
19 of speaking to Ms. Foster to the time you called
20 Detective Diskin, did you understand that she had
21 not yet provided that statement to the law
22 enforcement?
23 MS. POLK: Your Honor, lack of personal
24 knowledge, lack of foundation.
25 THE COURT: Sustained.

1 Q. BY MS. DO: Let me move on, Mr. Hamilton.
2 You have another employee named Rotillo
3 Vasquez?
4 A. **We do.**
5 Q. And the jury has heard Mr. Vasquez was
6 down at the sweat lodge ceremony on October 8;
7 correct?
8 A. **Earlier in the day. Yes. I'm not sure**
9 **when he was there and when he was not. I was not**
10 **there.**
11 Q. He did work the ceremony with Ted Mercer
12 and Debbie Mercer; correct?
13 A. **I don't know. I was not there.**
14 Q. Okay. If -- I just want you to assume,
15 hypothetically, there's been evidence to this jury
16 that Mr. Vasquez was at that ceremony. You would
17 not have any reason to dispute that; correct?
18 A. **No. If testimony says that, I would not**
19 **dispute that.**
20 Q. Now, Mr. Vasquez is also the employee
21 that is in charge of landscaping for Angel Valley;
22 correct?
23 A. **Correct.**
24 Q. So he would be the person who would, for
25 example, weed your property; correct?

1 **A. Correct.**
 2 **Q.** He might be in charge of maintenance, for
 3 example, if there are pest problems or anything
 4 like that; correct?
 5 **A. Correct.**
 6 **Q.** And he also was the person who cut up the
 7 wood; correct?
 8 **A. Correct.**
 9 **Q.** And he was also -- according to
 10 testimony, if you just accept that as hypothetical,
 11 was also present at the ceremony. Have you ever
 12 made arrangements for the detective to interview
 13 Mr. Vasquez?
 14 **A. No.**
 15 **Q.** Have you ever called the detectives and
 16 suggested that they interview Mr. Vasquez?
 17 **A. No.**
 18 **Q.** Only Fawn Foster; correct?
 19 **A. Yes.**
 20 **Q.** Now, you had indicated in answering
 21 Ms. Polk's questions that there are lawsuits
 22 pending against you; correct?
 23 **A. Correct.**
 24 **Q.** And you've also sued Mr. Ray and JRI;
 25 correct?

1 **A. Correct.**
 2 **Q.** And you told this jury yesterday that you
 3 were suing Mr. Ray and James Ray International
 4 because you had hoped that your business would
 5 rebound within the year; correct?
 6 **A. I said I did it reluctantly. We were**
 7 **hoping. My first approach is never to sue. It's**
 8 **to try to work things out with myself, with having**
 9 **the business continue. But suing is not a place I**
 10 **want to go.**
 11 **But after numerous things happened in**
 12 **other settlements and other things that were going**
 13 **on, yes. I -- we decided --**
 14 **Q.** Let me ask -- I'm sorry. Go ahead.
 15 **A. We decided that we had no choice at that**
 16 **moment in time. If we wanted to continue surviving**
 17 **and get some money to pay back some of the things**
 18 **that were created out of that event, that was the**
 19 **best option to do it. So we chose that path.**
 20 **Q.** So you're not the type to sue, sir.
 21 You're saying you've never sued before?
 22 **A. No. I've not.**
 23 **Q.** You've never sued before?
 24 **A. No.**
 25 **Q.** You sued Mr. Ray and James Ray

1 International because that hope that you had did
 2 not materialize; correct?
 3 **A. The hope, yes.**
 4 **Q.** The business continued to go down; is
 5 that correct?
 6 **A. Yes.**
 7 **Q.** Now, is it your testimony to this jury
 8 that your business went down because of the
 9 accident on October 8, 2009?
 10 **A. Yes.**
 11 **Q.** And you had told the jury that your
 12 business was on a steady incline before 2009 with a
 13 20 to 25 percent increase a year; is that correct?
 14 **A. Correct.**
 15 **Q.** And if I understand correctly, the
 16 five-day retreat brought to you by JRI generated
 17 income in the neighborhood of 100,000. Correct?
 18 **A. It was less than a hundred, but it was a**
 19 **substantial amount of money. Yes.**
 20 **Q.** You told this jury yesterday in answering
 21 Ms. Polk's question that you filed for Chapter 11
 22 bankruptcy on January 18, 2008; is that correct?
 23 **A. Correct.**
 24 **Q.** January 18, 2008. That's 22 months
 25 before the JRI Spiritual Warrior retreat; correct?

1 **A. Correct.**
 2 **Q.** And you filed for Chapter 11 bankruptcy
 3 because you had more debt than you could handle;
 4 correct?
 5 **A. We had mortgages that were -- let's just**
 6 **say it was the beginning of restructuring the**
 7 **mortgages. My wife and I own the land, so**
 8 **Chapter 11 was for Michael and Amayra Hamilton, not**
 9 **for Angel Valley.**
 10 **Q.** 22 months before the JRI Spiritual
 11 Warrior retreat, you claimed debt in excess of 6.5
 12 million; isn't that correct?
 13 **A. That's correct.**
 14 **Q.** That's what you were trying to discharge
 15 in your Chapter 11 bankruptcy; correct?
 16 **A. No.**
 17 **Q.** You weren't trying to discharge the debt
 18 you claimed?
 19 **A. No.**
 20 **Q.** Let me ask you this: That was the debt
 21 you had 22 months before the JRI Spiritual Warrior
 22 retreat in October of '09; correct?
 23 **A. Correct.**
 24 **Q.** Isn't it true, Mr. Hamilton, that it
 25 would help you in your civil lawsuits filed by the

1 participants if this was not Angel Valley's fault,
 2 not your fault, but Mr. Ray and JRI?
 3 **A. You want to rephrase or state it again.**
 4 **Q.** Well, let me ask it this way: Is it true
 5 that in the defense -- in your defense of these
 6 civil lawsuits filed against you by the
 7 participants and the estates of the decedents, your
 8 defense in those cases that it's not your fault,
 9 not Angel Valley's fault, but JRI's and Mr. Ray?
 10 **A. That's correct.**
 11 **Q.** Let me turn now to the questions Ms. Polk
 12 asked you yesterday about pesticides and
 13 organophosphates. Okay?
 14 **A. Okay.**
 15 **Q.** You told the jury that you had never --
 16 you hadn't prior to, I believe it was in March,
 17 when you talked to Detective Diskin, never heard of
 18 the phrase "organophosphates"; is that correct?
 19 **A. Correct.**
 20 **Q.** So you don't know what product would
 21 contain organophosphates -- correct? -- because you
 22 didn't know what it was?
 23 **A. No. I would not know.**
 24 **Q.** Okay. So you wouldn't know whether or
 25 not organophosphates is something that might be

1 common in, for example, fire ant killer; correct?
 2 **A. I looked after that time. Yes. I looked**
 3 **at the ingredients that we had. Then I knew it was**
 4 **not.**
 5 **Q.** I'm asking you before October 8, 2009,
 6 you did not know what would contain
 7 organophosphates because you didn't know what it
 8 was; correct?
 9 **A. Correct.**
 10 **Q.** Meaning you'd never read the labels of
 11 anything that said organophosphates; correct?
 12 **A. Correct.**
 13 **Q.** So you wouldn't know whether or not it's
 14 a common compound used in ant killer; correct?
 15 **A. No, I would not.**
 16 **Q.** All right. Ms. Polk asked you a few
 17 questions about sarin. Do you remember that?
 18 Sarin gas?
 19 **A. I do.**
 20 **Q.** Nerve gases; correct?
 21 **A. I do.**
 22 **Q.** Okay. And tell me if you don't know. Do
 23 you know whether or not organophosphates was
 24 originally developed as sarin or nerve gases?
 25 **A. I do not know.**

1 **Q.** Okay. Do you know now that it's most
 2 common use is, in fact, in pesticides and
 3 herbicides? If you know.
 4 **A. No, I do not.**
 5 **Q.** Now, I want to talk about the various
 6 conversations that you've had with anyone involved
 7 in this case, meaning the attorneys and the
 8 detectives. Okay?
 9 The jury has already heard that you had a
 10 telephone call that was tape-recorded on
 11 October 20th, 2009; correct?
 12 **A. Correct.**
 13 **Q.** And that was tape-recorded?
 14 **A. Correct.**
 15 **Q.** Then you also had an interview on
 16 October 26, 2009, and that was tape-recorded?
 17 **A. Correct.**
 18 **Q.** Correct?
 19 March 21, 2011, in the midst of this
 20 trial, you talked to Detective Diskin again;
 21 correct?
 22 **A. What was the date again?**
 23 **Q.** March 21, 2011.
 24 **A. Yes.**
 25 **Q.** In the midst of this trial; correct?

1 **A. Yes.**
 2 **Q.** You and your wife spoke to
 3 Detective Diskin; correct?
 4 **A. Yes.**
 5 **Q.** Together?
 6 **A. Yes.**
 7 **Q.** And was your attorney present?
 8 **A. No.**
 9 **Q.** So just you and your wife and
 10 Detective Diskin. Anyone else?
 11 **A. No.**
 12 **Q.** That interview or that conversation was
 13 not tape-recorded; correct?
 14 **A. It was -- no. It was just a discussion.**
 15 **Q.** Right. You and Amayra sat down with
 16 Detective Diskin -- and we're going to talk about
 17 what you talked about. But that one was not
 18 tape-recorded; correct?
 19 **A. Correct.**
 20 **Q.** Then April 6, 2011, you met with me and
 21 Mr. Kelly; correct?
 22 **A. Correct.**
 23 **Q.** And that was also tape-recorded?
 24 **A. Correct.**
 25 **Q.** By me; correct?

1 A. Yes.
 2 Q. By Detective Diskin?
 3 A. Yes.
 4 Q. And by Mr. Hughes?
 5 A. Yes.
 6 Q. Correct?
 7 So of all the four conversations, the
 8 only one that has not been tape-recorded is
 9 March 21, 2011; is that correct?
 10 A. Yes.
 11 Q. Did you at any time, Mr. Hamilton, become
 12 aware that Ted Mercer gave a statement to the
 13 sheriff that he thought he might have burned the
 14 wrong wood?
 15 MS. POLK: Objection, Judge. That misstates
 16 the testimony.
 17 THE COURT: Sustained.
 18 Q. BY MS. DO: Did you at any time become
 19 aware that Ted Mercer gave a statement to the
 20 detectives about the type of wood that was burned
 21 in the ceremony?
 22 A. I vaguely remember something right after.
 23 There were numerous statements that Ted made
 24 right -- that evening or the day after that I read
 25 way back when. But I don't remember the contents

1 of it.
 2 Q. When did you read it? Do you know?
 3 A. Right afterward. Back in October,
 4 November of 2009 when things were coming out about
 5 interviews and what was said and -- you know --
 6 there was a whole stream of things being said.
 7 Q. On the internet; correct?
 8 A. Internet, newspaper. I'm not -- I read
 9 something but I don't know whether it was on the
 10 internet or the newspaper.
 11 Q. All right. From one of those sources in
 12 about October or November of 2009, you read
 13 something about Ted Mercer's statements to the
 14 sheriffs; correct?
 15 A. Yes.
 16 Q. And it was a statement you believed that
 17 he had made that night or the next day; correct?
 18 A. He made at some time.
 19 Q. All right.
 20 A. I'm not sure when.
 21 Q. You do know that Detective Diskin was on
 22 Angel Valley property October 9, 2009, the Friday;
 23 correct?
 24 A. Yes.
 25 Q. Because he had collected some samples;

1 correct?
 2 A. Yes.
 3 Q. On that date did he ever come to you and
 4 ask questions what wood was on the property?
 5 A. I don't remember.
 6 Q. Do you remember whether or not
 7 Detective Diskin came to you on that day and asked
 8 you any questions about Rotillo Vasquez, the man
 9 that you had cut up the wood?
 10 A. I don't remember.
 11 Q. Isn't it true that the first time that
 12 Detective Diskin ever asked you about the wood that
 13 was used in this case was on March 21, 2011, in the
 14 midst of trial?
 15 A. I cannot be 100 percent sure, but I
 16 vaguely remember some discussion somewhere along
 17 the way, but I don't know when it was about the
 18 wood. It was very obvious the wood was there that
 19 we were using. I don't remember any -- any
 20 particulars on it.
 21 Q. Do you have any reason to dispute that
 22 there's no discussion of the wood used in the
 23 October 20th recorded telephone call between you
 24 and Detective Diskin?
 25 A. No.

1 Q. Do you have any reason to dispute that
 2 there was no discussion between you and
 3 Detective Diskin about the wood on the October 26,
 4 2009, recorded interview?
 5 A. No.
 6 Q. You do know that on March 21, 2011, the
 7 detective asked you about the wood; correct?
 8 A. Yes.
 9 Q. And that was not recorded; correct?
 10 A. No.
 11 Q. Did you at any time become aware that Ted
 12 Mercer gave a statement to the detectives or the
 13 sheriff about rat poison in the pump house?
 14 A. Not until the -- no. I did not know
 15 where the actual statement came from.
 16 MS. POLK: Objection. Misstates the testimony
 17 of Mr. Mercer. Mr. Mercer identified some --
 18 MS. DO: I'd ask for nonspeaking objections,
 19 Your Honor.
 20 MS. POLK: -- but wasn't sure if it was rat
 21 poison or not.
 22 THE COURT: You know, we're going to take one
 23 recess this afternoon, fairly briefly.
 24 Ladies and gentlemen, let's take an
 25 afternoon recess. About 15 minutes. Please be

1 ready to come back in at a quarter till. Remember
2 the admonition.

3 Mr. Hamilton, you're excused, as well.
4 Ask the parties to remain.
5 (Proceedings continued outside presence
6 of jury.)

7 THE COURT: The record will show the jury has
8 left. The defendant, Mr. Ray, and the parties are
9 present.

10 There has been a lot of testimony in the
11 weeks of this case, and I certainly try to stay
12 attuned so that I know if a question is phrased
13 inappropriately.

14 But Ms. Polk, in terms of phrasing the
15 question.

16 MS. POLK: Your Honor, the testimony from
17 Mr. Mercer was that he -- there was some substances
18 on the ground, some granules. He wasn't sure
19 whether or not they were rat poison.

20 My objection is to the phrasing of the
21 questions to this witness, characterizing the
22 testimony in this case as something other than it
23 has been.

24 THE COURT: I know I've sustained objections
25 along that line.

1 Ms. Do.

2 MS. DO: Your Honor, I understand and
3 appreciate that's the state's view of the evidence.
4 Mr. Mercer, on a tape that was played as a prior
5 inconsistent statement, said, there were chunks of
6 rat poison in the pump house when asked by the
7 detective. And that was October 9, 2009.

8 Now, I understand on the stand between
9 direct and cross-examination he has gone from rat
10 poison to could have been rat poison. I think that
11 there's sufficient evidence before this jury to
12 make the determination that the prior inconsistent
13 statement is more reliable. It's closer in time.
14 So that's -- that's the testimony.

15 And my question was, did you become aware
16 of Mr. Mercer's statement of rat poison in the pump
17 house? And that doesn't refer to his testimony.
18 That refers to the statement given to the detective
19 on October 9, which we now know this witness has
20 had review of sometime in either October or
21 November 2009.

22 THE COURT: Ms. Polk.

23 MS. POLK: Your Honor, the -- the testimony in
24 this case is the testimony that is elicited from
25 the stand. That's the testimony in this case, not

1 some statements made in prior interviews.

2 It sounds like Ms. Do is offering it for
3 the truth -- truth of the matter asserted, which
4 would make it hearsay and clearly inadmissible.

5 THE COURT: It would. And I think if that's
6 clarified that it's a statement that's made and
7 it's not asserted as something that was testimony
8 in -- in trial, then -- then the question could be
9 asked. There was a statement to that effect that
10 it should be clarified that this is not -- it can't
11 be offered for the truth. It would be a hearsay
12 statement.

13 MS. DO: Well, Your Honor, I'm not offering it
14 for the truth. It's obvious from my line of
15 questioning it's all directed to the witness's
16 credibility, his motivation, and bias to fabricate.

17 He has already told us just a moment ago
18 that he did review Mr. Mercer's statements given to
19 the sheriff. And we know he's only -- Mr. Mercer
20 has only given two statements -- October 8 and
21 October 9, 2009 -- both of which contained the
22 statements regarding the wrong wood and the rat
23 poison.

24 I wasn't referring to testimony in this
25 courtroom. I was referring to whether this witness

1 became aware of Mr. Mercer's statements to the
2 police. That clearly is being asked in a way that
3 suggests to the jury that I'm only interested in
4 his state of mind. I'm not saying that
5 Mr. Mercer's statement is -- is truthful. That's
6 up for the jury to decide.

7 THE COURT: Ms. Polk, you've seen the
8 statement?

9 MS. POLK: Your Honor, I see the statement.
10 The problem is this witness has no personal
11 knowledge of statements made by Mr. Mercer to the
12 police. This is hearsay, and it's not even clear
13 for what purpose it is being offered.

14 What's the purpose in confronting the
15 witness on the stand with a statement made by a
16 third party to the police?

17 THE COURT: If the statement was made, there
18 can be a question as to whether or not he's aware
19 of that statement. It just can't be asserted as if
20 it were testimony.

21 So that -- that question is permitted.

22 MS. DO: Thank you.

23 THE COURT: Thank you.

24 We're in recess.

25 (Recess.)

1 (Proceedings continued in the presence of
2 jury.)

3 THE COURT: The record will show the presence
4 of Mr. Ray, the attorneys, the jury. Mr. Hamilton
5 is on the witness stand.

6 Ms. Do.

7 MS. DO: Thank you.

8 Q. Good afternoon, again, Mr. Hamilton.

9 A. **Good afternoon.**

10 Q. I want to thank you for your patience. I
11 know it's been a long day, and it's a holiday
12 weekend. So let me try and wrap this -- wrap it
13 up.

14 Okay?

15 A. **Okay.**

16 Q. We were talking about before we took the
17 last break an interview that you had with
18 Detective Diskin on March 21, 2011, which, I think,
19 is about four weeks ago. Correct?

20 A. **Yes.**

21 Q. And the trial in this case was ongoing at
22 that time; correct?

23 A. **Yes.**

24 Q. And on that date, unlike the previous two
25 occasions, that conversation was not taped;

1 correct?

2 A. **Correct.**

3 Q. And unlike the previous occasions where
4 you're separated from any other witnesses, the
5 detective spoke to you with Amayra Hamilton
6 present; correct?

7 A. **Correct.**

8 Q. You were both in the same room listening
9 to each other's statements to the detective;
10 correct?

11 A. **We were in the same room together. Yes.**

12 Q. Able to listen and hear the conversation
13 that you each had with Detective Diskin; correct?

14 A. **Yes.**

15 Q. All right. And it was on that date that
16 Detective Diskin asked you to come down to the
17 Yavapai County Sheriff's Office in Prescott Valley;
18 correct?

19 A. **I believe we volunteered that to go down
20 so we could talk face to face.**

21 Q. And you did so; correct?

22 A. **We did.**

23 Q. And the purpose of that conversation on
24 March 21, 2011, as you previously told me, was to
25 talk about the treated wood and the rat poison in

1 the pump house; correct?

2 A. **Correct.**

3 Q. Now, we know that on October 9, 2009,
4 Detective Diskin was present on your property;
5 correct?

6 A. **Yes.**

7 Q. And if Detective Diskin had questions or
8 concerns about what might or might not be in your
9 pump house, you would have allowed him to go and
10 search the pump house that day; correct?

11 A. **Correct.**

12 Q. If he wanted to go into the pump house on
13 October 9 and photograph it so that somebody in the
14 future might know what exactly it looked like on
15 October 9, you would have let that happen; correct?

16 A. **Yes.**

17 Q. If there was anything that he thought
18 might be important in terms of evidence, you would
19 have let him go into the pump house and take
20 anything out; correct?

21 A. **Correct.**

22 Q. Now, you know on October 9, 2009 -- well,
23 I'm sorry. Let me ask you.

24 On October 9, 2009, when Detective Diskin
25 was already on the property after speaking to Ted

1 Mercer, did he ask you to look at the pump house?

2 A. **No.**

3 Q. To your knowledge did he ever?

4 A. **Never asked me. No.**

5 Q. All right. Now, the conversation you had
6 on March 21, 2011, you have just told the jury the
7 purpose of that conversation was to talk about the
8 wood and the rat poison in the pump house; correct?

9 A. **It was -- yes.**

10 Q. All right. And you understood that
11 Detective Diskin was asking you and your wife for
12 any facts that you may or may not have about the
13 use of pesticides at Angel Valley; correct?

14 A. **Correct.**

15 Q. Or herbicides; correct?

16 A. **Correct.**

17 Q. Or rat poison; correct?

18 A. **Correct.**

19 Q. And you understood that that was very --
20 it was important for you to be truthful and
21 complete during this conversation with the
22 detective; correct?

23 A. **Correct.**

24 Q. Now, we already know that that was not
25 taped. But I do have a report. Have you had a

1 chance to review the report drafted by
2 Detective Diskin?
3 **A. Yes.**
4 **Q.** And after reviewing that report, does
5 that report accurately memorialize the conversation
6 you had with the detective on March 21, 2011?
7 **A. Yes.**

8 **Q.** All right. On that date you told the
9 detective that you didn't believe in pesticides;
10 correct?

11 **A. Correct.**

12 **Q.** You told the detectives that -- you and
13 Amayra told the detective you don't use pesticides
14 at Angel Valley except for rat poison in the pump
15 house; correct?

16 **A. Except for the rat poison.**

17 **Q.** Yes. You don't use pesticides at Angel
18 Valley except for rat poison in the pump house;
19 correct?

20 **A. Except for rat poison, wherever it may**
21 **be.**

22 **Q.** Okay. You want me to take out the words
23 "pump house"?

24 **A. Yes.**

25 **Q.** All right. You told Detective Diskin

1 that you never use pesticides except for rat poison
2 on that date during this unrecorded call; correct?

3 **A. Correct.**

4 **Q.** Unrecorded interview; correct?

5 **A. Yes.**

6 **Q.** You also, then, told the detective that
7 when you use rat poison in the pump house, Amayra
8 always placed the rat poison on a dish; correct?

9 **A. Yes.**

10 **Q.** And you heard Amayra say that to the
11 detective, and you agreed with it; correct?

12 **A. Yes.**

13 **Q.** You also told the detective on
14 March 21, 2011, that you use the least toxic rat
15 poison you could find, which was Just One Bite;
16 correct?

17 **A. Correct.**

18 **Q.** Now, on that date, that was the full
19 extent of what you told the detective in terms of
20 what pesticides, what rat poisons, you used at
21 Angel Valley; correct?

22 **A. We talked about -- we did not initially**
23 **know what we were going up there for other than he**
24 **needed to talk to us. Once he talked to us, then**
25 **we actually gathered together what we did use.**

1 **Q.** I understand. On March 21, 2011, when
2 the detective asked you what pesticides, if any,
3 that you used, you said only rat poison and only
4 Just One Bite; correct?

5 **A. I would say yes. But I -- without**
6 **actually reading what I said, I'm not --**

7 **Q.** Do you need to review his report?

8 **A. Yes.**

9 **Q.** All right. Let me approach you with
10 that.

11 Counsel, you have this?

12 THE WITNESS: Okay.

13 **Q.** BY MS. DO: All right. So, now, looking
14 at Detective Diskin's report of March 21, 2011,
15 Amayra told him that she placed rat poison in a
16 dish on the floor to prevent rodent infestation;
17 correct?

18 **A. Correct.**

19 **Q.** And the rat poison that you and Amayra
20 identified to the detective on that date was
21 something called "Just One Bite"; correct?

22 **A. Correct.**

23 **Q.** You mentioned no other; correct?

24 **A. Correct.**

25 **Q.** You also mentioned nothing else about

1 other pesticides, for example, an ant killer;
2 correct?

3 **A. Correct.**

4 **Q.** And that was on March 21, 2011. Now,
5 after that you then the very next day, I believe,
6 provided the detective with some photographs;
7 correct?

8 **A. Correct.**

9 **Q.** Of the pump house?

10 **A. Correct.**

11 **Q.** And let me approach you with what's
12 already been admitted as 795, 796, 797, 798, and
13 799.

14 Do you recognize these photographs to be
15 the ones that you provided to the detective the day
16 after you spoke to him on March 21?

17 **A. Yes.**

18 **Q.** Do you know when you took these
19 photographs then?

20 **A. Not exactly. My wife took them.**

21 **Q.** Would have been after your
22 conversation --

23 **A. Yes.**

24 **Q.** -- with the detective?

25 **A. Yes.**

1 Q. On March 21?
 2 A. Yes.
 3 Q. So let's take a look at 795. That's a
 4 picture of the pump house; correct?
 5 A. Correct.
 6 Q. That pump house was there on
 7 October 9, 2009; correct?
 8 A. It was.
 9 Q. This is 796, another view of the same
 10 pump house; correct?
 11 A. Correct.
 12 Q. This is 797, the interior of the pump
 13 house; correct?
 14 A. Correct.
 15 Q. Now, you provided all of these
 16 photographs to the detective on March 22, 2011.
 17 Does that sound accurate to you?
 18 A. Yes.
 19 Q. At some point after March 22, 2011, and
 20 you have this conversation with the detective, you
 21 did become aware that Fawn Foster came to this
 22 court to testify to this jury; correct?
 23 A. Yes.
 24 Q. At that time I understand you -- you told
 25 us she was no longer an employee but she volunteers

1 for Angel Valley?
 2 A. She volunteers and works there. Yes.
 3 But not as an actual employee.
 4 Q. All right. So did you have to in some
 5 way excuse her absence on March -- excuse me -- on
 6 April 1st, 2011, for her to come to court to
 7 testify?
 8 A. No. She's on her own. She comes when
 9 she wants and leaves when she wants.
 10 Q. Were you aware that that's the date that
 11 she testified?
 12 A. I know she made a comment that they're
 13 calling me in on a certain time, but I don't know
 14 when. And that -- but I don't know the exact date.
 15 Q. After Ms. Foster testified to this
 16 jury -- you have no reason to dispute it was
 17 April 1, 2011?
 18 A. No, I do not.
 19 Q. Assuming that's the day, after she
 20 testified to this jury, Mr. Hamilton, did you ever
 21 speak to Ms. Foster regarding the substance of her
 22 testimony in this courtroom?
 23 A. No.
 24 Q. Did you watch her testimony?
 25 A. No.

1 Q. Did you do anything to learn what
 2 Ms. Foster may or may not have told this jury?
 3 A. No.
 4 Q. Did you ever become aware of whether or
 5 not Ms. Foster testified about the use of AMDRO ant
 6 killer at Angel Valley?
 7 A. No.
 8 Q. Did you ever become aware of whether or
 9 not Ms. Foster told this jury that she has used
 10 d-CON, another rat poison, at Angel Valley?
 11 A. No.
 12 MS. POLK: Objection, Your Honor. There needs
 13 to be a time frame for when Ms. Foster said she
 14 used the AMDRO.
 15 THE COURT: Sustained.
 16 Q. BY MS. DO: Well, my question, sir, is
 17 meant to be broad.
 18 Did you ever become aware of Ms. Foster
 19 testifying that she has used d-CON rat poison at
 20 Angel Valley?
 21 A. No.
 22 Q. All right. Because you understand that
 23 you're not supposed to know what another witness
 24 testified to; correct?
 25 A. Correct.

1 Q. So did you ever learn that Ms. Foster --
 2 whether or not Ms. Foster testified that she used
 3 ant killer, AMDRO ant killer, at the base of a
 4 cabin in June 2010?
 5 A. I knew that from before a long time ago
 6 because we had the issue of an ant there -- ants.
 7 Long before the testimony.
 8 Q. Right. What I'm asking you, sir, is did
 9 you become aware that Ms. Foster provided that
 10 testimony to this jury?
 11 A. No.
 12 Q. On March 21, 2011, during this unreported
 13 conversation, you never mention the use of AMDRO
 14 ant killer to the detective, did you?
 15 A. No. It did not come up at that moment.
 16 Q. Let me ask you this: When you spoke to
 17 the detective on March 21, 2011, you also never
 18 mentioned to him the use of d-CON rat poison;
 19 correct?
 20 A. Correct.
 21 Q. You never mentioned to him the use of
 22 something called the "JD Eaton" (sic throughout)?
 23 A. JD Eaton?
 24 Q. Is that correct?
 25 A. Yes.

1 Q. And that's also another rat poison?
 2 A. Correct.
 3 Q. The only thing you told the detective you
 4 used on March 21 was Just One Bite; correct?
 5 A. Yes. On that date for me it was all
 6 settled around October the 8th. It didn't have to
 7 do with the entire time we've been at Angel Valley.
 8 That's where the other things were brought in.
 9 Q. May I have that report back?
 10 So it's your understanding that
 11 Detective Diskin was narrowing his questions to
 12 October 2009?
 13 A. Yes.
 14 Q. Was there any reason, then, why Amayra
 15 said that the soil in and around the sweat lodge
 16 has not been exposed to herbicides, pesticides,
 17 fertilizers, since you purchased the property in
 18 2002?
 19 A. As a general statement about our belief
 20 and our use of those type of products.
 21 Q. So you did have a discussion with the
 22 detective reaching back to 2002; correct?
 23 A. Amayra did on those particular items.
 24 But we did not go back -- when someone asks me a
 25 question, I cannot always answer it exactly in that

1 moment. When I have an opportunity to reflect, oh,
 2 yeah, what all did we use from the time we got
 3 there until today? And that was what we were
 4 doing, wanting to be 100 percent open, say these
 5 are all the products that we used while we were at
 6 Angel Valley and being as clear as we could on
 7 that.
 8 So that day -- you know -- with
 9 Detective Diskin for me was narrowed to December
 10 the -- I mean, October the 8th. And yes. Amayra
 11 brought in our philosophy on herbicides and
 12 pesticides.
 13 Q. Well, we don't have a tape-recording so
 14 we don't -- we wouldn't know exactly what was asked
 15 and answered; correct?
 16 A. Correct.
 17 Q. What we do have is just this report;
 18 correct?
 19 A. Correct.
 20 Q. And based on this report, you and
 21 Mrs. Hamilton did speak about what was used since
 22 you purchased the property in 2002; correct?
 23 A. Correct.
 24 Q. So my question to you, sir, is on that
 25 date you did not mention to the detective anything

1 about AMDRO or d-CON or JD Eaton; correct?
 2 A. Correct.
 3 Q. That came up after Ms. Foster testified
 4 on April 1?
 5 A. That came up --
 6 Q. I'm not suggesting anything other than
 7 the fact that it came after the date of April 1.
 8 Correct?
 9 A. What was the date again on when we met
 10 with Ross -- with Detective Diskin?
 11 Q. March 21, 2011.
 12 A. Okay. Right after that I went down to
 13 our -- what we will call our "utility building,"
 14 and I pulled out everything we had that had been
 15 accumulated there on the property. I did not
 16 remember what was there and what was not.
 17 So it was on that day that the -- that
 18 whole subject came up on organophosphates and
 19 pesticides, et cetera, that I went back and said,
 20 what do we have? And that's when I went and I
 21 found the AMDRO. And I found the other products on
 22 the next day.
 23 Q. The next day after you spoke to
 24 Detective Diskin?
 25 A. Yes.

1 Q. And that would be March 22 --
 2 A. Yes.
 3 Q. -- 2011?
 4 Let me show you 798. This was a
 5 photograph that you and your wife provided to the
 6 detective on March 22, 2011; correct?
 7 A. Okay.
 8 Q. And that depicts the -- the rat poison on
 9 the plate in the pump house?
 10 A. Correct.
 11 Q. The Just One Bite; correct?
 12 A. That's correct.
 13 Q. I'm going to show you also 799, which is
 14 a close-up view of the Just One Bite on the plate;
 15 correct?
 16 A. Correct.
 17 Q. Have I gone through all of the
 18 photographs that you took for Detective Diskin of
 19 what all was used at Angel Valley that you provided
 20 to him? Do you understand my question?
 21 A. Do you want to rephrase it?
 22 Q. Well, you just said to the jury that you
 23 went into the utility house and you saw a bunch of
 24 different things that were used; correct?
 25 A. Yes.

1 Q. Did you photograph the utility house?
 2 A. **No, I did not.**
 3 Q. Did you photograph the things that you
 4 pulled out of the utility house?
 5 A. **No. Not on that day.**
 6 Q. Did -- you've done it subsequently?
 7 A. **Yes. You have -- you have copies of it.**
 8 Q. I do?
 9 A. **Yes.**
 10 Q. Okay. I will ask you about them. I
 11 don't -- I'm not sure if that's correct, but let me
 12 get back to that.
 13 Sir, you didn't provide any photographs
 14 on March 22 of anything else other than what we see
 15 up here, Exhibit 799; correct?
 16 A. **That's correct.**
 17 Q. Okay. You now have testified to this
 18 jury that you, in fact, did use a pesticide called
 19 "AMDRO," which is an ant killer; correct?
 20 A. **Correct.**
 21 Q. And let me understand this, sir. You
 22 have a property that's about 70 acres?
 23 A. **Correct.**
 24 Q. Is that correct?
 25 A. **Correct.**

1 Q. And I noticed that just walking out of my
 2 house today that there were a bunch of fire ant
 3 killers. Is that a common problem here in Arizona?
 4 A. **It is.**
 5 Q. And do you have that problem there at
 6 Angel Valley?
 7 A. **We have nests of fire ants. Yes.**
 8 Q. Okay. And in this 70 acres, since you've
 9 owned it in 2002, you're testifying to this jury
 10 that you've only used ant killer once?
 11 A. **Yes.**
 12 Q. And that was --
 13 A. **AMDRO? Yes.**
 14 Q. Other ant killers?
 15 A. **No. In the other document you have a**
 16 **whole -- natural product that we use for ants.**
 17 Q. Okay. Excluding whatever natural
 18 products you've used, I'm talking about things that
 19 you pulled out of the utility shed or bought at Ace
 20 Hardware.
 21 Are you telling this jury that in the 70
 22 acres that you own, once in nine years you've used
 23 a product to kill ants?
 24 A. **I'm saying one time in that period I've**
 25 **used AMDRO for ants. The rest of the time we used**

1 **a natural product that we mixed up on the property.**
 2 Q. Did you use anything else?
 3 A. **No.**
 4 Q. Okay. Now, on April 6, 2011, we talked
 5 about the AMDRO; correct?
 6 A. **Correct.**
 7 Q. And I asked you when it was that you used
 8 AMDRO on Angel Valley. Do you remember that?
 9 A. **I do.**
 10 Q. And do you remember telling me on
 11 April 6, when it was recorded -- if you need to
 12 refresh your memory, we can have it played. You
 13 told Mr. Kelly and I that you actually don't
 14 remember using it at Angel Valley, when it was.
 15 Do you remember that?
 16 A. **I don't remember the exact date. I**
 17 **remember -- I remember a discussion year, two years**
 18 **ago, three years ago, that -- when was the**
 19 **discussion?**
 20 **There was a discussion where Fawn did**
 21 **come in and say we have an ant problem in a**
 22 **particular cabin and she needs a product to deal**
 23 **with it. I do not remember the exact date that she**
 24 **told me that.**
 25 Q. You didn't tell Detective Diskin about

1 that conversation with Ms. Foster on
 2 March 21, 2011; correct?
 3 A. **No.**
 4 Q. My question is, on April 6, 2011, when I
 5 was asking you about when it was that you used
 6 AMDRO, Mr. Hamilton, do you remember telling me
 7 that you simply couldn't remember?
 8 A. **Yes. I remember the situation but not**
 9 **the date.**
 10 Q. Okay. But here yesterday you told this
 11 jury that you remember using AMDRO at the base of a
 12 cabin in 2010. Do you remember that?
 13 A. **Yes, I do. Yes.**
 14 Q. And --
 15 A. **So it would have been, yes, 2010. Sorry.**
 16 Q. And that's not a coincidence that
 17 Ms. Foster also testified that she used it at the
 18 base of a cabin in June of 2010?
 19 A. **No. When I'm only told one time about a**
 20 **particular ant problem in a cabin, that sticks out**
 21 **in my mind because that's not something that**
 22 **normally happens.**
 23 Q. But when we spoke about it on April 6th,
 24 you simply didn't remember?
 25 A. **I didn't have the exact --**

1 **Q.** Okay. Let me ask you about the rat
2 poison.
3 When I spoke to you on April 6, 2011,
4 which was about five days after Ms. Foster
5 testified, you told me and Mr. Kelly, with the
6 state present, that you, in fact, use more than
7 just Just One Bite. Do you remember that?
8 **A.** Since we got to Angel Valley, yes, I did.
9 **Q.** Since you spoke to the detective on
10 March 21, 2011; correct?
11 **A.** Yes.
12 **Q.** Because on that date you made no mention
13 about any other rat poison except for Just One
14 Bite; correct?
15 **A.** Because it was talking about
16 October the 8th.
17 **Q.** You're sure that Detective Diskin only
18 asked you about October 8th?
19 **A.** That's all I was referring to on that
20 day.
21 **Q.** And on that day you did tell me and
22 Mr. Kelly about additional rat poison, and you
23 pulled out a binder that you had; correct?
24 **A.** Correct.
25 **Q.** And out of that binder you had some

1 additional photographs; correct?
2 **A.** Correct.
3 MS. DO: Your Honor, I move for the admission
4 of Exhibit 882 and 884. And I believe Ms. Polk is
5 not objecting.
6 THE COURT: Ms. Polk.
7 MS. POLK: Your Honor, first I'd like the
8 witness to see them and make sure that they are the
9 exhibits that Ms. Do is referring and that he
10 recollects them.
11 THE COURT: Sure.
12 MS. DO: Sure.
13 **Q.** I'm showing you four photographs that are
14 on two pages, 882 and 884. You gave me copies of
15 these after the April 6, 2011, conversation with
16 Mr. Kelly and I; correct?
17 **A.** Correct.
18 MS. DO: Move for their admission, Your Honor.
19 MS. POLK: Your Honor, no objection.
20 THE COURT: 882 and 884 are admitted.
21 (Exhibits 882 and 884 admitted.)
22 **Q.** BY MS. DO: Now, again, these were not
23 photographs that you gave the detective along with
24 that photograph --
25 **A.** No.

1 **Q.** -- on March 22 --
2 **A.** No. They were not.
3 **Q.** -- correct?
4 **A.** Correct.
5 **Q.** These were additional photographs you
6 pulled out of a binder on April 6; correct?
7 **A.** Correct.
8 **Q.** That was five days after Ms. Foster
9 testified?
10 **A.** Okay.
11 **Q.** Now, let's take a look at 882. I believe
12 you had testified to some of this on direct
13 yesterday. You told Ms. Polk that you had a
14 problem with rats getting into the engine of your
15 cars back in 2006?
16 **A.** Correct.
17 **Q.** And these photos -- photographs that you
18 gave me on April 6 or after April 6. Depict what
19 happened in 2006; correct?
20 **A.** Those are the actual photographs. Those
21 were not staged. Those were the actual photographs
22 taken in that time. Yes.
23 **Q.** Mr. Hamilton, I didn't say anything about
24 staged. I'm asking you, you gave me these photos;
25 correct?

1 **A.** Yes.
2 **Q.** Okay. Now, when you gave me these
3 photographs, you told me that the product we see on
4 this plate put on top of your engine included the
5 JD Eaton; correct?
6 **A.** Correct.
7 **Q.** The d-CON; correct?
8 **A.** Correct.
9 **Q.** And is there Just One Bite on that plate?
10 **A.** There is.
11 **Q.** All right. And so you were trying to
12 explain to me that there was actually three kinds
13 of rat poison that you use used at Angel Valley at
14 some point; correct?
15 **A.** Correct.
16 **Q.** Now, you have these photographs, and the
17 jury can see that the bottom here there is a stamp
18 of 26/10/2006. Do you know who put that there?
19 **A.** My wife.
20 **Q.** Okay. So this was something that was
21 physically, manually placed there by your wife;
22 correct?
23 **A.** If you look on the right side, you see
24 the red. That came from the camera.
25 **Q.** That's the distinction I want to draw.

1 The white numbers on the left-hand corner, as we're
2 looking at the screen, was placed there by your
3 wife; correct?

4 **A. Correct.**

5 **Q.** The numbers that we see on the right-hand
6 corner, looking at the screen, in red, which says,
7 26, 3:23 a.m., was stamped by the computer -- or
8 I'm sorry. The camera. Correct?

9 **A. Correct.**

10 **Q.** Now, I take it, then, this is a digital
11 camera?

12 **A. You have to check with my wife on that.**

13 **Q.** Okay. Do you know whether or not this --
14 these photographs, the originals, either JPEG or
15 whatever form it's in -- let me finish the
16 question. And if you don't know, that's fine.
17 Are they still on your computer in any
18 way?

19 **A. They would be --**

20 **Q.** Okay.

21 **A. -- on my wife's computer.**

22 **Q.** I'm going to ask you -- you or your wife
23 to provide the actual digital copies -- okay? -- of
24 these photographs. Would you do that for me?

25 **A. Yes.**

1 **Q.** Thank you.

2 Now, you told the jury yesterday that you
3 took photographs -- or you asked Amayra to take
4 photographs of these -- rat poison that you placed
5 on your engine out of curiosity, I believe. Is
6 that correct?

7 **A. Yes.**

8 **Q.** You wanted to know what happened from the
9 26th to, for example, what Mrs. Hamilton has placed
10 as October 28th, 2006; correct?

11 **A. Correct.**

12 **Q.** So you were curious about the progression
13 of the rats eating the poison?

14 **A. Before we started with the rat poison, we**
15 **were told to use moth -- to use moth balls. And we**
16 **had that -- in one of the photos, you can actually**
17 **see it hanging in the left, the moth balls. And**
18 **that didn't work. So we progressed up to the rat**
19 **poison.**

20 **Q.** Right. What I'm asking you, sir, is
21 yesterday you testified to this jury that you had
22 your wife take these photos in October of 2006
23 because you were curious; correct?

24 **A. Yes.**

25 **Q.** And then Ms. Polk asked you a question of

1 whether or not you were making an insurance claim.
2 And you responded, I didn't know I could make an
3 insurance claim; correct?

4 **A. Yes. It never crossed my mind.**

5 **Q.** Never crossed your mind; correct?

6 **A. No.**

7 **Q.** Now, on April 6th, 2011, I asked you that
8 exact same question, why you and your wife took
9 these photographs. Do you remember that?

10 **A. I remember we had a discussion on it,**
11 **yes.**

12 **Q.** And do you remember what you told me when
13 I asked you, why did you or your wife take these
14 photographs?

15 **A. Not offhand, no.**

16 **Q.** Would it refresh your recollection to
17 look at a transcript --

18 **A. Sure.**

19 **Q.** -- of that recorded conversation?

20 **A. Sure.**

21 **Q.** I have it here, sir.

22 **A. Okay.**

23 **Q.** Would it refresh --

24 **A. Yes, it would.**

25 **Q.** Okay. So it never even crossed your mind

1 to file an insurance claim or that you could file
2 an insurance claim; correct?

3 MS. POLK: Your Honor, objection. First of
4 all, it was not Ms. Do who asked the question about
5 what prompted Mr. Hamilton to take the photographs.

6 THE COURT: Ms. Do.

7 MS. DO: Your Honor, may I have a moment?

8 THE COURT: Yes, you may.

9 MS. DO: Thank you. I'm going to stand
10 corrected on that.

11 **Q.** During this interview somebody asked you
12 that exact same question Ms. Polk asked you
13 yesterday; correct?

14 **A. Correct.**

15 **Q.** In fact, I think it was Mr. Hughes.
16 Correct?

17 **A. I don't know.**

18 **Q.** You're not sure?

19 **A. No.**

20 **Q.** But somebody asked you, Mr. Hamilton, why
21 did you or your wife take these photographs in
22 October of 2006? Correct?

23 **A. Correct.**

24 **Q.** And your testimony in this courtroom to
25 this jury is, out of curiosity; correct?

1 **A. For me, as best I can remember today,**
 2 **yes. When I look back, why did I do it?**
 3 **Curiosity.**
 4 **Q.** I didn't mean to step on your words.
 5 **A. At that moment in time I do not remember**
 6 **thinking about the insurance.**
 7 **Q.** Okay. Because it never crossed your
 8 mind; correct?
 9 **A. Not that I remember now.**
 10 **Q.** Let me approach you with the transcript
 11 of our April 6, 2011, recorded conversation. It's
 12 been marked as 889. And ask you to look at
 13 page 11. Read to yourself lines 4 through 12.
 14 All right?
 15 **A. Okay.**
 16 **Q.** And let me know when you've read that,
 17 sir.
 18 **A. Yes.**
 19 **Q.** Okay. And that question was, do you know
 20 what -- or why she, meaning your wife, decided to
 21 take photos? Was there something that prompted
 22 that? And your answer was?
 23 **A. Yes. We weren't sure whether we could**
 24 **have any insurance proceeds, which I do not**
 25 **remember.**

1 **Q.** Okay.
 2 **A. Evidently I said it. So I'm not denying**
 3 **what I said here.**
 4 **Q.** Okay. So on April 6, which was a couple
 5 weeks ago, you told Mr. Kelly and I that you had
 6 these photos taken in October 2006 because you
 7 thought you might file an insurance claim; correct?
 8 **A. At that moment -- what I'm saying here is**
 9 **we were not sure we could have any insurance**
 10 **proceeds way back then. So it wasn't -- I never**
 11 **called them? No. I -- I remember -- I see what I**
 12 **said here. Yes.**
 13 **Q.** I'm just trying to understand why you or
 14 your wife took these photos in October of 2006.
 15 **A. I will stand on corrected on this. It**
 16 **was more out of curiosity. It wasn't that we had**
 17 **an intent --**
 18 **Q.** Okay.
 19 **A. -- to actually do it.**
 20 **Q.** But you or your wife will provide the
 21 digital copies --
 22 **A. Yes.**
 23 **Q.** -- that may contain the actual --
 24 **A. Absolutely.**
 25 **Q.** Thank you.

1 Now, you had said something sort of
 2 unsolicited, that these were not staged photos. Do
 3 you remember that?
 4 **A. I do.**
 5 **Q.** Okay. And I hadn't asked you anything
 6 about that.
 7 **A. But I looked at the first one you showed,**
 8 **which had no -- all the other ones have the -- the**
 9 **rat deposits there. That one did not. I just**
 10 **wanted to make sure that was very clear you showed**
 11 **the one that did not have what the rats brought**
 12 **back.**
 13 **Q.** I can't seem to zoom in.
 14 Well, you provided these photos to me;
 15 correct?
 16 **A. I did.**
 17 **Q.** Okay. Now, talking about staged photos,
 18 the ones that you provided to the detective on
 19 March 22, 2011, of the pump house -- this is
 20 Exhibit 797. You told me on April 6, 2011, that
 21 what you were trying to do with these photographs
 22 was to replicate the exact condition of the pump
 23 house as it existed on October 8, October 9, 2009;
 24 correct?
 25 **A. What I said we were attempting to do to**

1 **the best of my ability. And since we talked then,**
 2 **I do not -- I was not in the pump house on the 9th**
 3 **or the 8th of October. We were trying to show what**
 4 **we may have put in the pump house when we did put**
 5 **the rat poison there.**
 6 **I cannot say for sure. And I take back**
 7 **whatever I said on that testimony that I was not --**
 8 **I was not trying to say that's what was in the pump**
 9 **house. Because I was not physically there.**
 10 **Q.** Mr. Hamilton, do you remember a
 11 back-and-forth between you and me where I wanted to
 12 make sure that what you were trying to do in these
 13 photographs was based upon what you saw with your
 14 own eyes?
 15 Do you remember that?
 16 **A. Yes.**
 17 **Q.** Do you remember me asking you, you
 18 replicated whatever you were trying to replicate in
 19 these photographs based upon what you had seen in
 20 October of 2009?
 21 **A. Let me back up and reclarify.**
 22 **Q.** Okay. Do that.
 23 **A. After you and I spoke that day, I went**
 24 **home. And I'm thinking, wait a minute. Did I**
 25 **really -- was I even in the pump house that day?**

1 **No, I was not. And was I in the pump house the day**
 2 **before? No, I was not. Do I remember seeing a**
 3 **plate like that in a pump house at some time? Yes.**
 4 **Absolutely. But I was not in the pump house.**

5 **And that's what came up after our -- the**
 6 **interview that you did with myself. Came up clear**
 7 **that no. I was not in the pump house anytime in**
 8 **the days or weeks before. So I don't know when I**
 9 **would have seen that plate.**

10 **So does that bring clear what I**
 11 **originally said? I take it back. No. I did not**
 12 **see that in the pump house on that day.**

13 **Q.** Can I ask you to take a look at the
 14 transcript of our April 6, 2011 --

15 **A. Okay.**

16 **Q.** -- conversation at page 8 starting at
 17 line 19, sir?

18 Do you remember me asking you with
 19 respect to these photographs, were you trying to
 20 stage it so it looked like what occurred in 2009?

21 **A. That's what's here. And I just recanted**
 22 **what I said here. I'm taking back -- I did not**
 23 **mean October 8th of 2009.**

24 **Q.** Okay. I understand that. And you're
 25 recanting it; correct?

1 **A. Yes, I am.**

2 **Q.** So the jury understands recanting, it
 3 means you're taking it back?

4 **A. What I said then was not accurate, was**
 5 **not correct, because I was not in the pump house**
 6 **for days or weeks before October the 8th.**

7 **Q.** But I want to --

8 **A. I apologize for that.**

9 **Q.** Thank you.

10 **A. That was not my intent, but that's what**
 11 **came out.**

12 MS. POLK: Judge, I have an objection because
 13 what is in the transcript is just what occurred
 14 in 2009. Ms. Do read it to suggest it was limited
 15 to October of 2009.

16 MS. DO: I think I read it verbatim. But I
 17 also have a clip, Your Honor. We can play it.

18 THE COURT: Well, do you have the transcript
 19 here?

20 MS. DO: I do, Your Honor. It's page 8,
 21 line 19, to page 9, line 2.

22 THE COURT: Does it refer to month and day?

23 MS. DO: I read it, were you trying to stage
 24 it so that it looked like what occurred in 2009?

25 And that's what's in the transcript.

1 THE COURT: And that's the statement. Okay.

2 MS. DO: Correct.

3 **Q.** Do you remember me asking you that
 4 question, sir?

5 **A. Yes, I do.**

6 **Q.** Okay. Thank you.

7 And you answered, yeah; correct?

8 **A. Yes.**

9 **Q.** And then I asked you, okay. So based
 10 upon that, then, Michael, is it fair to say that
 11 you would have seen the plate with product -- that
 12 product in 2009? And your answer was?

13 **A. Yes. And I may have seen it in 2009.**

14 **Q.** Stay with me for just a second here.

15 **A. Okay.**

16 **Q.** You said yes; correct?

17 **A. I did.**

18 **Q.** Then I asked you, okay. Do you know
 19 whether or not that plate with product was there
 20 in 2008? And your answer was?

21 **A. I would say yes, it was.**

22 **Q.** And then I asked you, now, when you say
 23 yes to any of these, I want to make sure that we're
 24 not -- it's based upon what you see with your own
 25 eyes. Are you going into the pump house and seeing

1 it?

2 And your answer?

3 **A. Was yes.**

4 **Q.** So 2009 would include October 8, 2009;
 5 correct?

6 **A. I've just said what I said in here was**
 7 **not accurate.**

8 **Q.** And I understand that, sir. And -- and
 9 the jury will decide that. But what I want to get
 10 at is what was discussed on April 6. Okay?

11 **A. Okay.**

12 **Q.** Do you remember me beginning April 6 with
 13 telling you that it's not a formal deposition but
 14 it was very important to give truthful and accurate
 15 statements?

16 **A. Yes.**

17 **Q.** All right. And you were trying to do
 18 that; correct?

19 **A. To the best of my ability.**

20 **Q.** So when I asked you those questions to
 21 make certain that you were basing these photographs
 22 that you and Amayra Hamilton took, that these
 23 photographs were based upon your eyes in the pump
 24 house in 2009 -- you made clear that you had seen
 25 it in 2009; correct?

1 **A. Based on this, yes.**
 2 **Q.** Okay. Now, my question to you, sir, is
 3 when we talked about these photographs. I had
 4 asked you if you were trying to stage it so it
 5 looked like what you had seen in 2009; correct?
 6 **A. Yes.**
 7 **Q.** All right. So when you went to the pump
 8 house and took these photographs on March 22nd --
 9 let me finish the question.
 10 March 22nd, 2011, Mr. Hamilton, did you
 11 clean up the pump house?
 12 **A. I did not go to the pump house. I did**
 13 **not take the photos.**
 14 **Q.** You didn't tell me you took these photos?
 15 **A. Never did I tell you I took them.**
 16 **Q.** Okay. Amayra Hamilton took them?
 17 **A. Amayra took them.**
 18 **Q.** Okay. And you and Amayra Hamilton
 19 provided them to the detectives; correct?
 20 **A. Amayra provided them to the detective.**
 21 **Yes.**
 22 **Q.** And my question to you is when I spoke to
 23 you on April 6, you indicated to me that your
 24 attempt or what your intent was behind these
 25 photographs was to -- and I'll just read it

1 verbatim.
 2 My question was, were you trying to stage
 3 it so that it looked like what occurred in 2009?
 4 And your answer was yes. Correct?
 5 Just -- is that yes?
 6 **A. Yes.**
 7 **Q.** Okay. You didn't at that point tell me,
 8 like you're trying to tell the jury now, that it
 9 wasn't you and it was Amayra; correct?
 10 **A. Yes.**
 11 **Q.** You accepted joint responsibility, so to
 12 speak, for taking these photographs; correct?
 13 MS. POLK: Your Honor, I would ask that the
 14 witness be allowed to look through the transcript
 15 for the discussion of who took the photographs.
 16 Alternatively, I would move this
 17 transcript be admitted into evidence.
 18 THE COURT: The witness --
 19 Mr. Hamilton, take your time and look
 20 through the transcript.
 21 THE WITNESS: Okay.
 22 **Q.** BY MS. DO: Let me know whenever you're
 23 ready.
 24 MS. POLK: Your Honor, may I direct the
 25 witness to a page to speed up the process?

1 THE COURT: Yes. Would you do that, please.
 2 MS. POLK: Mr. Hamilton, if you look towards
 3 the bottom of page 7 of that transcript.
 4 THE WITNESS: Okay.
 5 **Q.** BY MS. DO: Have you reviewed what
 6 Ms. Polk directed you to --
 7 **A. I did now.**
 8 **Q.** Bottom of page 7?
 9 **A. Yes.**
 10 **Q.** Okay.
 11 **A. And I stand corrected. I did not take**
 12 **any photographs of the pump house. 99.99 percent**
 13 **of all photographs are taken by my wife, not me.**
 14 **Q.** Okay. I just want to make sure that the
 15 jury knows what you've just reviewed at Ms. Polk's
 16 request.
 17 At the bottom of page 7 of this recorded
 18 conversation --
 19 MS. POLK: It was just to refresh his
 20 recollection. But again, if you want to agree to
 21 the whole transcript to be admitted into evidence,
 22 the state will agree to that.
 23 MS. DO: Your Honor, I'm -- I'm not sure what
 24 else is contained in there, and I don't think
 25 that's appropriate.

1 **Q.** So let me ask you this, Mr. Hamilton:
 2 The bottom of page 7 is me asking you, well, I
 3 understand you took some pictures or your wife may
 4 have taken some pictures. Correct?
 5 **A. Yes.**
 6 **Q.** And your answer was, oh. That was done
 7 that day. Correct? At line 28?
 8 **A. Yes.**
 9 **Q.** Then let's continue on to page 8. We
 10 have some more discussion. Do you see anywhere
 11 between page 7, where I just began, to line 8,
 12 where you told me that your wife and not you took
 13 the photos?
 14 **A. No. That was the only one where -- no.**
 15 **Q.** Okay. And the bottom line is -- it
 16 doesn't concern me whether you took the photo or
 17 not or whether Amayra took it. Okay?
 18 What I'm asking you is, you and I had a
 19 whole conversation about what you were trying to do
 20 with these photos. Do you remember that?
 21 **A. Yes.**
 22 **Q.** Okay. I'll even go further. And on
 23 page 8 starting at line 11, I asked you, so I just
 24 want to make sure I understand this because I think
 25 I had a different understanding of those photos.

1 And I don't mean this pejoratively. When you say
2 you sat down the plate with the product that day to
3 take a photo --

4 MS. POLK: Your Honor, can I -- could Counsel
5 direct me to where she's reading from?

6 MS. DO: Page 8, line 11 and on.

7 MS. POLK: And is there a question for the
8 witness or why is Ms. Do reading from the
9 transcript now?

10 MS. DO: I'm going to ask some questions.

11 THE COURT: Go ahead.

12 MS. DO: Thank you.

13 Q. Mr. Hamilton, on that date I asked you
14 this question: So I just want to make sure I
15 understand this, because I think I had a different
16 understanding of those photos. And I don't mean
17 this pejoratively. When you say you sat down the
18 plate with the product that day to take a photo,
19 was it, basically, you were trying to stage so that
20 it looked like what you believe. You interrupted
21 me and you said yes. Correct?

22 A. Yes.

23 Q. And then I said, occurred before. What
24 you believe occurred before. And you said yes.
25 Correct?

1 A. Yes.

2 Q. And I continued and asked you, were you
3 trying to stage it so that it looked like what
4 occurred in 2009. And your answer was yes.
5 Correct?

6 A. Yes.

7 Q. Now, earlier you told the jury that that
8 conversation you had with the detective on
9 March 21, 2011, you understood that to be about
10 October 8th, 2009; correct?

11 A. Yes.

12 Q. And so when you the very next day took
13 photos to stage what occurred in 2009, weren't you
14 responding to what you said Detective Diskin asked
15 you about?

16 A. It would appear like that.

17 Q. Okay. And so here's my question, then:
18 If were you trying to stage these photographs to
19 show what looked like the pump house in 2009, are
20 we now talking about October?

21 A. I restate what I -- the statement I just
22 made about what was in here and what I'm now
23 saying. There are times when I'm talking about --
24 when you're talking about you, yes. I'm married.
25 Sometimes I get it a little confused. As far as my

1 wife taking the photographs and me saying I put the
2 plate down, I did not put the plate down.

3 Q. Sir, and that -- and that's fine. I
4 accept that your wife took the photos. Okay?
5 That's not what I'm asking you.

6 What I'm asking you is, you told me on
7 April 6th that these photos were meant to
8 replicate -- because we know Detective Diskin
9 didn't take photos of the pump house on October 9.
10 Correct?

11 A. Correct.

12 Q. We know there are no photos of the pump
13 house on October 9; correct?

14 A. Correct.

15 Q. So what you were trying to do here after
16 you spoke to the detective about rat poison or no
17 rat poison in the pump house was to show him what
18 it looked like in October of 2009; correct?

19 A. Yes.

20 Q. Now, when you took this photo, I'm asking
21 you, did you clean the pump house?

22 A. No.

23 Q. This is -- this is the way you believe
24 the pump house looked like on October 8,
25 October 9, 2009; is that correct?

1 A. That's the way the pump house looked on
2 the day the photograph was taken. There was
3 nothing doctored up about the pump house.

4 Q. I didn't say doctored. I'm asking you,
5 because you were trying to replicate -- and let me
6 start with this question: Did you understand that
7 these photos that you were going to give to the
8 detective would come before this jury?

9 A. Yes.

10 Q. You understood that it would come -- it
11 would come before this jury so they would
12 understand what the evidence was on October 8,
13 October 9, 2009; correct?

14 A. Yes.

15 Q. And so my question to you, Mr. Hamilton,
16 is this: Before you took those photos to show the
17 jury what it looked like on the 8th and the 9th,
18 did you clean the pump house?

19 A. No.

20 Q. So this is how it looked; correct?

21 A. Let's back up. I do not know when the
22 pump house was cleaned. We put a water purifying
23 system behind there. It was -- and that was
24 probably a year ago. So it was probably cleaned a
25 year ago.

1 **But when the photograph that my wife took**
 2 **where she set the plate down underneath the table,**
 3 **that was done on that day that we took the**
 4 **photograph.**

5 **Q.** Let look at that one, then. This is 798.
 6 That contains the plate with the Just One Bite;
 7 correct?

8 **A. Correct.**

9 **Q.** And when you or your wife -- was it your
 10 wife that set that down?

11 **A. Yes.**

12 **Q.** In fact, you told the detective on
 13 March 21 that Amayra always put Just One Bite on a
 14 plate underneath the table; correct?

15 **A. Yes.**

16 **Q.** In the pump house; correct?

17 **A. That -- yes.**

18 **Q.** And so when you took this photo for this
 19 jury, you intended for them to understand that this
 20 is what it looked like on the relevant date in
 21 question -- October 8, October 9, 2009; correct?

22 If it's a no, you can say no.

23 **A. No.**

24 **Q.** Okay. You never said that before?

25 **A. No. I'm saying what I -- excuse me.**

1 **Q.** Take your time.

2 **A. When you and I met and I made the**
 3 **statement that I was trying to make it look -- or**
 4 **that we -- Amayra was trying to make it look like**
 5 **it was in October 8 of 2009, I was not present that**
 6 **day, nor was I present the day before, nor the week**
 7 **before.**

8 **So whatever I said there, I recant once**
 9 **again because I incorrectly spoke on how it was**
 10 **going to be presented.**

11 **Q.** Okay. And I'm going to accept that you
 12 recant that.

13 This photo that we're looking at,
 14 Exhibit 798 -- if somebody who had been in the pump
 15 house 2008, 2009, October 2009, said that this does
 16 not look like the condition that they saw the pump
 17 house, would you have any reason to dispute with
 18 that?

19 **A. Yes, I would.**

20 **Q.** You would?

21 **A. I would.**

22 **Q.** And what was your -- what would your
 23 dispute be?

24 **A. There would have been -- prior to**
 25 **October 8th and 9th there would have been blankets**

1 **and all kinds of tarps -- the covering on top of**
 2 **that table. And there were more things in the pump**
 3 **house. But I don't know exactly what was in other**
 4 **than all the products that went to make the sweat**
 5 **lodge.**

6 **Q.** So it wasn't clean as we see it in these
 7 photos; correct?

8 **A. No, it was not.**

9 **Q.** There was a bigger mess; correct?

10 **A. No. I wouldn't say a mess. There were**
 11 **bigger -- there were more things in the pump house.**

12 **Q.** Let's talk about the rat poison. If
 13 somebody said that they went into the pump house in
 14 October of -- 8th, 9th, 2009, and didn't see the
 15 rat poison placed neatly and nicely on a plate
 16 underneath the table, would you have reason to
 17 dispute with that?

18 **A. Not really.**

19 **Q.** Okay. So --

20 **A. I wasn't there. So I can't dispute**
 21 **somebody that's telling me what they saw on the 8th**
 22 **or 9th or 10th because I wasn't there. I did not**
 23 **see it.**

24 **Q.** So you weren't attempting in these
 25 photographs to stage it in any way; correct?

1 **A. We were attempting to stage that what it**
 2 **would look like when rat poison was there, whenever**
 3 **that was. And I'm not here saying when the rat**
 4 **poison was actually there. But whenever it was,**
 5 **that's what it would have looked like.**

6 **Q.** So since you're recanting that statement
 7 that you made to me on April 6 that these
 8 photographs intended to replicate the relevant days
 9 in this case --

10 MS. POLK: Your Honor, objection. That
 11 misstates what was in the interview. We've
 12 established that he was referring to what occurred
 13 in 2009. And there's no reference to any relevant
 14 days of 2009.

15 MS. DO: I'm asking my question based upon his
 16 testimony.

17 THE COURT: Ms. Do, phrase a question and
 18 please move on through.

19 MS. DO: I will.

20 **Q.** I want to get through this, and then
 21 we're going to be done, Mr. Hamilton.

22 You are now recanting to this jury that
 23 these photographs were staged by you and
 24 Mrs. Hamilton to replicate anything that occurred
 25 in 2009; is that correct?

1 **A. Anytime that we -- let me be clear one**
 2 **last time.**
 3 **Anytime rat poison would have been put in**
 4 **the pump house, it would have been put like that.**
 5 **And I do not know the exact date nor time that it**
 6 **was there.**

7 **Q.** Okay. Since you do not know -- since you
 8 have no personal knowledge that these photographs
 9 even replicate anything that happened in the pump
 10 house on October 8 or 9, you would agree with me
 11 that these photographs are irrelevant for the jury;
 12 correct?

13 **A. Yes.**

14 MS. POLK: Your Honor, objection. Calls for a
 15 conclusion.

16 THE COURT: Overruled.

17 **Q.** BY MS. DO: That's a yes; correct?

18 **A. Yes.**

19 **Q.** But these were the photographs that you
 20 provided to the detective on March 22, 2011, the
 21 day after you had an unrecorded conversation about
 22 what rat poison was used in the pump house?

23 **A. Yes.**

24 MS. DO: Your Honor, may I have one moment?

25 THE COURT: Yes.

1 MS. DO: Thank you.

2 Your Honor, may we approach?

3 THE COURT: Okay.

4 Please feel free to stand and stretch.

5 MS. DO: Thank you.

6 (Sidebar conference.)

7 THE COURT: Ms. Do.

8 MS. DO: Thank you, Your Honor.

9 There is one last area. And I need
 10 guidance from the Court. The Court ruled this
 11 morning that no more evidence, no more testimony
 12 regarding prior sweat lodges. And we understand
 13 that, and we think that's the correct ruling at
 14 this time. However, there has been a lot admitted
 15 that the Court has not stricken. Ted Mercer,
 16 Debbie Mercer.

17 I would like to cross-examine this
 18 witness based upon impeachment of Mr. and
 19 Mrs. Mercer. It is, I don't think, disputed by
 20 counsel that in 2007 and 2008 neither Ted or Debbie
 21 Mercer ever complained to Mr. Hamilton or
 22 Mrs. Hamilton that anything went awry at the sweat
 23 lodges. They, in fact, had a staff evaluation
 24 in 2008 after the sweat lodge with Gary Palish
 25 present. Mr. Hamilton has previously made

1 statements that nothing was brought to his
 2 attention.

3 I think that's fair and permissible
 4 cross-examination based upon what the Court has
 5 allowed in. If the Court is unwilling to strike at
 6 this time, I think to preclude me from
 7 cross-examination of that area would, in our
 8 opinion, somewhat aggravate the prejudice that has
 9 inured to us based upon the admission of this
 10 evidence so far. So I just need guidance on
 11 without opening any doors.

12 THE COURT: Ms. Polk.

13 MS. POLK: First of all, the state has not
 14 been provided with any staff evaluation by
 15 Mr. Palish or anybody. I'm not sure what that was
 16 a reference to. And there has been no testimony
 17 about any sort of staff evaluation.

18 I'm not aware of any interview with
 19 Mr. Hamilton where he indicates that the Mercers
 20 never complained to him. I don't know what the
 21 basis is for these statements that Ms. Do has just
 22 made about the area she intends to cross-examine.

23 THE COURT: There can be cross-examination in
 24 that area. I've not stricken the testimony. It's
 25 in there. And the Mercers testified extensively.

1 So there can be. But once again --

2 MS. DO: I'm going to be quick through this.

3 THE COURT: No hearsay type things. If it's
 4 going to be brief cross-examination, it's in. So I
 5 think that's legitimate.

6 MS. DO: Thank you.

7 THE COURT: Ms. Do.

8 MS. DO: All right.

9 (End of sidebar conference.)

10 **Q.** BY MS. DO: Mr. Hamilton, I just have one
 11 last area I'd like to ask you questions about.

12 You have already told this jury that Gary
 13 Palish and Ted Mercer and Debbie Mercer were
 14 involved in the 2007 and the 2008 JRI sweat lodges;
 15 correct?

16 **A. Correct.**

17 **Q.** And I know you were not physically
 18 present at either one of those. Correct?

19 **A. Correct.**

20 **Q.** In 2007, immediately after Mr. Ray had
 21 his -- JRI had his sweat lodge ceremony on your
 22 property, did Ted or Debbie Mercer ever complain to
 23 you about any illnesses that occurred at that sweat
 24 lodge?

25 **A. No.**

1 Q. After Mr. Ray and JRI had that sweat
2 lodge ceremony in 2007, did Gary Palish ever
3 complain to you about any illnesses or problems
4 that occurred at the sweat lodge?

5 A. No.

6 Q. In fact, up until October 8 of 2009, when
7 this tragedy occurred, Ted Mercer never complained
8 to you about anything happening at any of the prior
9 sweat lodges; correct?

10 A. Correct.

11 Q. Debbie Mercer never complained to you
12 about anything happening at the prior sweat lodges;
13 correct?

14 A. Correct.

15 Q. Or even Gary Palish --

16 A. Correct.

17 Q. -- is that correct?

18 A. Yes.

19 MS. DO: Thank you, Your Honor. I have
20 nothing further.

21 THE COURT: Thank you, Ms. Do.

22 Ms. Polk, redirect?

23 MS. POLK: Yes, Your Honor.

24 I need a couple moments to pull some
25 exhibits.

1 (Pause in proceedings.)

2 MS. POLK: Your Honor, may Ms. Do and I
3 briefly approach?

4 THE COURT: Yes.

5 (Sidebar conference.)

6 MS. POLK: Based on that last line of
7 questioning, I'd like to explore what his knowledge
8 would be to know of problems in 2007 and 2008. I
9 don't believe he was managing -- would have been
10 around in 2008.

11 And with regard to 2007, I'd like to
12 explore what would have been -- where he was, how
13 was it he would have learned about problems and why
14 he would not.

15 THE COURT: Ms. Do.

16 MS. DO: Your Honor, I was very brief in my
17 questioning to try and abide by the Court's ruling.
18 This was fair cross-examination given the evidence
19 that's come in.

20 I don't think that redirect in those
21 areas, given the extensive testimony this witness
22 has given under direct and cross regarding his
23 involvement in the operations, is necessary. And
24 I'm afraid that counsel is going to go into the
25 area that's already been precluded.

1 THE COURT: Under the circumstances, yeah. I
2 think there was very brief -- just a few questions.
3 He's already talked about his capacity and when he
4 had hands-on type of --

5 MS. POLK: That's what I'd like to establish,
6 what his relationship was with the Mercers, what
7 was the chain of command in 2007 and 2008, who they
8 would have been reporting to.

9 The suggestion was made that the Mercers
10 didn't report any problems to him. I'd like to
11 establish who was supervising them, why is it that
12 he wouldn't have heard from them.

13 THE COURT: You know, if the question -- if
14 it's not done in that context -- well, the defense
15 has stayed away from that, and that's a legitimate
16 question.

17 Ms. Polk, it's going to right back in and
18 bring the jury right back into thinking really
19 something must have happened.

20 MS. POLK: Your Honor, we know things
21 happened. She suggested that the witnesses were
22 not being truthful. That was her whole purpose.
23 She stated that intent. She wanted to impeach the
24 Mercers with the fact that they didn't provide that
25 information to this witness.

1 It's legitimate and fair to find out what
2 the relationship with the Mercers was with who was
3 in charge and did they answer to him on a
4 day-to-day basis.

5 MS. DO: Your Honor, because the Court wanted
6 me to keep it brief and abide by that, I didn't
7 ask. He did -- for example, he did speak to Ted
8 Mercer when he hired him to the October 8, 2009,
9 sweat lodge. Mr. Mercer made a statement wanting
10 more money because Mr. Ray takes a long time and
11 made no mention about any problems.

12 Because I was trying to abide by the
13 Court's ruling to allow this to go back under
14 redirect, treading back into the area the Court is
15 trying to preclude.

16 THE COURT: I'm trying to preclude any
17 additional information. I let it stand at this
18 point. I don't --

19 MS. POLK: He's not going to offer additional
20 information. Just going to establish who was
21 supervising the Mercers in 2007 and 2008.

22 THE COURT: That one question -- if you want
23 to ask that one question, that's it.

24 MS. POLK: Thank you.

25 MS. DO: Thank you.

1 THE COURT: Ms. Polk.
 2 (End of sidebar conference.)
 3 REDIRECT EXAMINATION
 4 BY MS. POLK:
 5 Q. Mr. Hamilton, in 2007 who was supervising
 6 Ted and Debbie Mercer?
 7 A. Gary Palish.
 8 Q. And in 2008 who was supervising Ted and
 9 Debbie Mercer?
 10 A. Gary Palish.
 11 Q. Do you have in front of you Exhibit 889?
 12 A. I do. I do.
 13 Q. And is that the transcript of your
 14 interview by Ms. Do on April 6th of 2011?
 15 A. Yes.
 16 Q. And I just want to briefly try to clear
 17 up this discussion of the photographs of the pump
 18 house --
 19 A. Okay.
 20 Q. -- and what they were intended to
 21 represent when your wife took them.
 22 A. Okay.
 23 Q. Do you recall the questions from Ms. Do
 24 about whether or not you intended for them to
 25 replicate what was in the pump house on October 8th

1 or October 9th of 2009?
 2 A. I do.
 3 Q. Would you look at page 7.
 4 A. Yes.
 5 Q. If you look at line -- starting at
 6 line 12.
 7 A. Yes.
 8 MS. POLK: And Your Honor, under Rule 106, I
 9 would like to read this portion.
 10 THE COURT: Yes.
 11 Q. BY MS. POLK: And I'll let you read where
 12 it says, M. Hamilton. That would be Michael
 13 Hamilton. And I'll read where it says, Do. That
 14 would be Ms. Do.
 15 A. Okay.
 16 Q. Ms. Do said to you, all right. When did
 17 you first see that plate with the product that you
 18 think is Just One Bite in the pump house?
 19 And what did you say?
 20 A. Well, probably.
 21 Q. And Ms. Do said, I assumed that you did
 22 not put that --
 23 And what did you say?
 24 A. I don't -- I don't know a date. No.
 25 Q. And Ms. Do said, okay. And that's no --

1 you did not put it there; right?
 2 And what did you say?
 3 A. No.
 4 Q. And Ms. Do said, okay. I understand.
 5 I'm not -- there's no way you can remember the
 6 exact date. But can you tell me was it the first
 7 time that you saw that plate, the product,
 8 in 2011, 2010, 2009?
 9 And what did you say?
 10 A. I don't remember. I don't have a date on
 11 when it was in there. We -- I would say I don't
 12 know. I don't have a date.
 13 Q. Thank you.
 14 MS. DO: Your Honor, if Ms. Polk still would
 15 like to admit the entire audio and transcript into
 16 evidence, I have no objection.
 17 THE COURT: Ms. Polk.
 18 MS. POLK: Your Honor, the state would agree
 19 with that.
 20 THE COURT: Okay. And the number, then,
 21 please?
 22 MS. DO: I believe it is 889 is the transcript
 23 and 890 is the audio.
 24 THE COURT: The -- okay. Then both would be
 25 admitted, Counsel, or just the transcript?

1 MS. POLK: Your Honor, the transcript or the
 2 audio. I'm fine with both.
 3 MR. LI: Typically you admit just the audio.
 4 The transcript is --
 5 THE COURT: So 890, Counsel. What's the
 6 stipulation?
 7 MS. DO: That's fine, Your Honor.
 8 THE COURT: Okay. Then by agreement, 890 will
 9 be admitted as evidence.
 10 (Exhibit 890 admitted.)
 11 THE COURT: I do want to remind counsel that I
 12 indicated to the jury that we will be recessing by
 13 4:00.
 14 Q. BY MS. POLK: And, Mr. Hamilton, I want
 15 to ask you some questions to clear up the
 16 photographs that were taken in 2006 of the types of
 17 products you used to take care of the rats for your
 18 vehicles.
 19 A. Yes.
 20 Q. Do you recall that line of questioning?
 21 A. I do.
 22 Q. And I'm going to put the photograph --
 23 I'm going to put up on the overhead Exhibit 883.
 24 And then that's the second -- the bottom part of
 25 it.

1 On -- during that interview that you had
2 with Ms. Do on April 6 of 2011, do you recall when
3 it was that the subject of these photographs came
4 up?

5 **A. When we were talking about the rat**
6 **poisons that were used at Angel Valley.**

7 **Q.** And had you brought to that interview, to
8 that meeting with Ms. Do, a binder of different
9 things?

10 **A. I did.**

11 **Q.** And during that interview did you
12 voluntarily open that binder and bring out these
13 photographs?

14 **A. I did.**

15 **Q.** Who was it who, then, asked for copies of
16 these photographs?

17 **A. Ms. Do.**

18 **Q.** And at that time did you pull out the
19 pictures and the state provided copies to Ms. Do?

20 **A. No. We went home and then emailed them.**

21 **Q.** And let's clear up the dates on these
22 photographs. What's in white, that date says
23 28/10/2006. How did that get on that photograph?

24 **A. Amayra put it on. And she's from Europe**
25 **and they use that numbering system, the day before**

1 the month.

2 **Q.** And what do you mean she put it on? What
3 did she put it onto?

4 **A. She took the one on the red -- on the**
5 **right -- that was the actual date. And then she**
6 **went ahead and put it in white so it would be**
7 **visible on the photograph on the exact date that**
8 **the photograph was taken.**

9 **Q.** What did she use to do that with? What
10 tech -- technology?

11 **A. I don't know.**

12 **Q.** Was it with the computer?

13 **A. With the computer.**

14 **Q.** And you just referred to the date on the
15 right. Are you able to see that date on the right?

16 **A. I am.**

17 **Q.** And can you tell the jury what the date
18 on the right is?

19 **A. 28, 9:49 p.m.**

20 **Q.** And that 28. How does that correlate to
21 the date?

22 **A. That would be the 28th of October.**

23 **Q.** And would that correlate to what is in
24 white?

25 **A. Yes.**

1 **Q.** And that would be 2006?

2 **A. Correct.**

3 **Q.** And for the second photograph, are you
4 able to read -- first of all, what's the date in
5 white?

6 **A. That would be the 29th of October 2006.**

7 **Q.** And how does that relate to what is in
8 red?

9 **A. The 29th is on the right side.**

10 **Q.** I'm going to put up on the overhead
11 Exhibit 882 and ask you the same questions.

12 The date of that top one is what?

13 **A. Is 26th of October 2006.**

14 **Q.** And how does that correlate to what is in
15 red over here?

16 **A. 26th.**

17 **Q.** And then for the bottom photograph, what
18 is the date of that?

19 **A. Be the 28th of October 2006.**

20 **Q.** How does that correlate to what is over
21 here?

22 **A. The 28th.**

23 **Q.** And you mentioned some moth balls. Are
24 you able to see the moth balls in one of these
25 photographs?

1 **A. I am. I just saw it.**

2 **Q.** I'm going to put up 883 --

3 **A. That one.**

4 **Q.** -- and have you show the jury where the
5 moth balls are.

6 **A. That was the first attempt that we heard**
7 **from a mechanic saying that if you put moth balls,**
8 **that will take care of the rats. So we tried that,**
9 **and they still kept chewing. So they -- they**
10 **remained and we put the rat poison in.**

11 **Q.** And let's clear up, then, or clarify what
12 products you used at Angel Valley.

13 You testified about AMDRO. Tell the jury
14 when it was that AMDRO was used at Angel Valley.

15 **A. It would have been in the -- as best as I**
16 **can recall, sometime in 2010 when we had an ant**
17 **problem in the one cabin.**

18 **Q.** And had you used any other product prior
19 to 2010, whether natural or not, for the ants at
20 Angel Valley?

21 **A. Yes. We used natural products for the**
22 **ants.**

23 **Q.** And tell the jury what those natural
24 product were.

25 **A. Diatomaceous earth was one of them. And**

1 there was also a mixture that -- I still don't
2 remember what all was in it. We have -- it was in
3 the notebook that I brought that day for my
4 interview, the actual components of what went into
5 that natural formula.

6 Q. And did you give that to Ms. Do that day?

7 A. No. We gave it to her later. We emailed
8 the whole -- everything that was in the book that
9 she requested.

10 Q. And on -- during that interview with
11 Ms. Do on April 6th of 2011, did you provide her
12 with information about all the various products
13 used at Angel Valley to take care of ants or rats?

14 A. We did. From the beginning of time that
15 we got there, every product that we ever used. I
16 gave her a copy of it.

17 Q. And would that include the d-CON?

18 A. Yes.

19 Q. And the JR Eat Um (sic)?

20 A. Yes.

21 Q. That was all provided to her that day?

22 A. Yes -- no. It was provided to her later,
23 the actual copies. But I gave it to her that day.
24 I showed it to her.

25 Q. Did you learn at some point,

1 Mr. Hamilton, that it was being suggested here in
2 this courtroom that some sort of chemical or
3 product that you used might have caused the deaths
4 of the victims in this case?

5 A. That came up when Detective Diskin called
6 and said, what did you use?

7 Q. And when was that?

8 A. In March, whenever that --

9 Q. Of what year?

10 A. 2011.

11 Q. And prior to that had it ever been
12 suggested to you that some product out at Angel
13 Valley might have been the cause?

14 A. No.

15 Q. Have you always cooperated with
16 Detective Diskin and law enforcement in this case?

17 A. To the best of our ability.

18 Q. And Ms. Do covered the times that you
19 have had interviews with law enforcement. Were
20 there other times that you have talked to
21 Detective Diskin about this case?

22 A. If there was a particular question, I
23 would only on very rare occasions pick up the
24 phone. When he called, Amayra would normally be
25 the one -- if he had a quick question, she would be

1 the one that would take the call.

2 Q. Did you from time to time speak to
3 Detective Diskin without an attorney present, for
4 example?

5 A. Yes.

6 Q. Has there ever been anytime that you
7 refused to give information to law enforcement?

8 A. Never.

9 Q. You were asked some questions by Ms. Do
10 about the wood. Do you recall that?

11 A. I do.

12 Q. And do you recall the suggestion by
13 Ms. Do that the first time you ever told the
14 detective about the wood was in March of 2011?

15 A. Yes.

16 Q. Do you recall providing to the state and
17 through the state to the defense information about
18 the cedar logs prior to March of 2011?

19 A. Yes.

20 Q. Do you recall when that was?

21 A. Not offhand. No.

22 Q. And if you saw a document, would that
23 help refresh your recollection?

24 A. It would.

25 Q. I'm going to show you, just for purposes

1 of refreshing your recollection, Exhibit 837 and
2 ask you if you recognize that document.

3 A. It's one my wife would have prepared.
4 Yes.

5 Q. And let me refer you to the third page.
6 And just ask you -- I'll point you to a specific
7 paragraph.

8 A. Okay.

9 Q. And does this document refresh your
10 recollection as to whether or not you have provided
11 to the state information about the use of the cedar
12 logs to burn --

13 A. Yes.

14 Q. -- for the sweat lodge ceremony of
15 October?

16 A. Yes.

17 Q. And what is the date of this document?

18 A. November 2010.

19 Q. And do you understand that information
20 you provide to us is provided to the defense?

21 A. Yes.

22 Q. Do you recall the question from Ms. Do
23 about the lawsuit that you filed against Mr. Ray
24 and James Ray International?

25 A. Yes.

1 Q. And specifically your attention was
2 directed to paragraph 12 of that lawsuit. Do you
3 have in front of you Exhibit 884?

4 A. No, I do not. I have 661. That may be
5 that -- the year -- no. Maybe not.

6 MS. POLK: Judge, what time are we going to
7 stop?

8 THE COURT: 4:00.

9 MS. POLK: Okay. This probably would be a
10 good time to stop. We'll find the exhibit.

11 THE COURT: Thank you, Ms. Polk.

12 Ladies and gentlemen, we will take the
13 weekend recess at this time. And I'll say again,
14 remember the admonition, of course.

15 I just wanted to express my appreciation
16 for how diligent, prompt, attentive you have been
17 throughout the trial.

18 One minor thing came up at lunch. And,
19 as always, you wrote the note and did exactly the
20 right thing. So I'm speaking on behalf of all of
21 us involved in the trial. We all appreciate all
22 the hard work you're putting into this -- this
23 case. So thank you. I'll excuse you in just a
24 moment. I'll ask you to reassemble next Tuesday at
25 9:15.

1 And I just want to remind the witness,
2 Mr. Hamilton, again about the importance of
3 following the rule of exclusion of witnesses, not
4 attempting to learn anything about testimony of
5 other witnesses or talk to other people about your
6 testimony, other witnesses in particular, but
7 really anybody. Not try to communicate in any
8 fashion. I think you understand that.

9 Again, you can talk to the attorneys as
10 long as other witnesses are not present. I know
11 you understand that.

12 THE WITNESS: Yes.

13 THE COURT: So we'll be in recess.

14 I am going to ask the attorneys to please
15 wait for a few minutes. Thank you.

16 (Proceedings continued outside presence
17 of jury.)

18 THE COURT: Just a couple of administrative
19 matters here.

20 First, Counsel, I think Ms. Rybar gave
21 you a copy of the note from the jurors. Correct?

22 MR. HUGHES: Yes, Your Honor.

23 THE COURT: Okay. So anyway, I'm just going
24 to go ahead and file that at this time. There was
25 no incident there. The jurors did exactly as they

1 are instructed to do.

2 To clear up the exhibit thing -- and I
3 really want to make sure we get a clear record on
4 the exhibits. When the excerpt was played, there
5 was a reference to Exhibit 661. And the clerk,
6 Rhondi, pointed out that actually the exhibit is --
7 it was a CD. And it's Exhibit 660. So I just --
8 so 660 is what is admitted. And it's just that
9 portion with the times as indicated.

10 Correct, Ms. Do?

11 MS. DO: Yes, Your Honor. If the Court wants
12 me to prepare the excerpt and have that actually
13 marked and moved into evidence. I don't know if
14 we've been doing that. I think it's just --

15 THE COURT: We had a discussion about this
16 before. And I just want to make very clear on the
17 record, if the whole CD is going in, that only part
18 of it is actually in evidence. That's also going
19 to be an issue when the evidence goes to the jury
20 as well. At some point there's going to have to be
21 just the particular excerpt.

22 Ms. Polk.

23 MS. POLK: Your Honor, the state did not agree
24 that just the excerpt be admitted into evidence.
25 The excerpt that was played -- I understood Ms. Do

1 was offering to move into evidence the entire
2 transcript.

3 MS. DO: That's not correct. Or perhaps
4 Ms. Polk is mistaken.

5 THE COURT: It's a different -- different CD.
6 We're talking -- the last one. And Mr. Li got
7 involved in that. But it was -- it was 890. And
8 that -- and both sides agreed that the entire --

9 MS. DO: Yes.

10 THE COURT: -- CD would come in. I'm talking
11 about an earlier excerpt that was played just a few
12 seconds.

13 MS. DO: Correct. Off of 660. And -- I'm
14 happy to provide that excerpt and move that into
15 evidence if that's what Ms. Polk wants.

16 It was my impression that throughout the
17 trial if an excerpt was played either to refresh or
18 as an inconsistent statement, we just play but it's
19 not being moved into evidence. At least that's how
20 Mr. Li has been doing it.

21 But whatever the Court wants we'll do.

22 THE COURT: Well, I'll have to -- if I hear a
23 stipulation that something is in evidence, it's
24 going into evidence. That's my understanding.

25 Ms. Polk.

1 MS. POLK: I think we're talking about two
2 different things that have been played.

3 THE COURT: Right.

4 MS. POLK: The state stipulated to --

5 What number is it?

6 THE COURT: 890.

7 MS. POLK: Which would be the entire --

8 THE COURT: Correct.

9 MS. POLK: Entire audio?

10 THE COURT: Right.

11 MS. POLK: I agree with Ms. Do that the
12 excerpts that are played, that those -- when
13 they're being played for impeachment purposes only,
14 that they are not being admitted into evidence.

15 But I do have a concern for the sake of
16 the record that they be separately identified
17 somehow so that the record reflects what was played
18 for the jury. Because the court reporter is not
19 taking down what's being played when we're playing
20 audio.

21 THE COURT: Yes. All right. Well, that --
22 that needs to be cleared up. So at this point it's
23 Exhibit 660 that's -- that's part of the record.
24 But it's only going to be a portion of that. And I
25 think the only way to do that is to have the

1 excerpt separate. It'll be marked separately but
2 referenced back to 660.

3 And if the understanding is when these
4 are played, they're not going to become extrinsic
5 evidence that's going to go to the jury -- that
6 needs to be specified. And if that -- so I think
7 you need to talk and make sure there's a clear
8 understanding. If there's a disagreement, I'm just
9 going to have to make the call obviously.

10 MS. DO: Okay, Your Honor. I'll do that. I
11 will prepare -- and I gave the time stamp when I
12 played it. Exhibit 660. We'll prepare an excerpt
13 and mark that for identification.

14 And I would agree with Ms. Polk. I
15 believe that it should not be coming in as
16 extrinsic evidence.

17 THE COURT: Okay. All right.

18 MS. POLK: Yes, Your Honor. But throughout
19 the trial there have been a number of excerpts
20 played. I'm concerned that we don't have a clear
21 record of what all those excerpts have been. But I
22 know it's the practice of the clerk when a trial is
23 over, if an exhibit has not been admitted, that the
24 exhibits get returned to the parties.

25 THE COURT: True.

1 MS. POLK: So what I would like to suggest is
2 that the defense perhaps prepare a written list of
3 the various excerpts that have been played with the
4 time stamp and then provide separate CDs that have
5 each of those clips on them.

6 THE COURT: I've been asking for that. But
7 I'll tell you, I thought a lot of this -- there was
8 a stipulation it was actually going to go as
9 evidence to the jury. And I -- you know -- unless
10 it's --

11 MS. DO: That's fine, Your Honor. Perhaps --

12 THE COURT: But not necessarily. I know
13 sometimes it just has been played.

14 MS. DO: Yes.

15 THE COURT: And I -- we've been trying to make
16 a record each time.

17 But just please, if there's any
18 misunderstanding about that, I want to address that
19 sooner rather than later.

20 MS. DO: Will do.

21 THE COURT: Okay.

22 MS. POLK: And, Your Honor, can we get a
23 written record from the defense of what the various
24 audio clips have been that they have played with
25 the dates --

1 THE COURT: Ms. Do?

2 MS. POLK: -- with the time stamps?

3 MS. DO: Yeah. We can do that. I don't know
4 that we can do it by next Tuesday.

5 THE COURT: Well, it doesn't have to be done
6 by next Tuesday as far as I'm concerned. But --
7 you know -- I want to make sure the record is clear
8 on that.

9 MS. DO: Will do.

10 THE COURT: Okay. Thank you.

11 We'll be in recess at this time.

12 (The proceedings concluded.)
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1 STATE OF ARIZONA }
2 COUNTY OF YAVAPAI } ss REPORTER'S CERTIFICATE

3

4 I, Mina G Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 2nd day of May, 2011

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MINA G HUNT, AZ CR No 50619
CA CSR No 8335

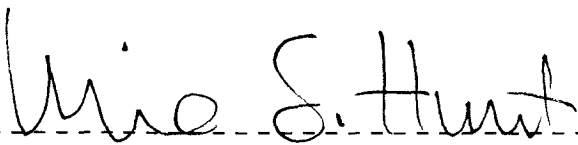
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